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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
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IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

IN RE THE PERSONAL RESTRAINT
PETITION OF:

ROBERT RUDNER,

Petitioner.

NO. 40169-0-II

STATE'S RESPONSE TO PERSONAL
RESTRAINT PETITION

A. ISSUES PERTAINING TO PERSONAL RESTRAINT PETITION:

1. Should this court dismiss defendant's claim that his convictions and firearm enhancements violate double jeopardy where the Supreme Court rejected this argument in *State v. Kelly*? (Pertains to Ground for Relief #1)
2. Should this court dismiss defendant's claim this his assault convictions merge with his robbery conviction where the Supreme Court has held that the legislature intended assault in the first degree and robbery to be punished separately and an analysis of the facts of this case does not support a double jeopardy or merger argument in regards to the assault in the second degree charge? (Pertains to Grounds for Relief # 2)
3. Should this court dismiss defendant's claim that the imposition of additional time for firearm enhancements was improper where the State alleged

1 firearm enhancements in the information, asked the jury to find such enhancements
2 beyond a reasonable doubt and the jury returned special verdict forms finding
3 defendant was armed with a firearm during the commission of his crimes?

4 (Pertains to Ground for Relief # 3)

5 4. Should this court decline to review defendant's claim challenging the jury
6 instructions when defendant challenged a jury instruction on appeal but chose not
7 to challenge the instruction challenged in this petition and where defendant cannot
8 show error? (Pertains to Grounds for Relief # 4)

9 5. Should defendant's claims that he received ineffective assistance of
10 counsel be dismissed where he cannot show deficient performance or prejudice?

11 (Pertains to Grounds for Relief # 4, 5, 6, and 7)

12 5a. Was defense counsel required to object where no authority supports
13 an objection? (Pertains to Grounds for Relief # 4)

14 5b. Can defendant show deficient performance or prejudice where
15 defendant was informed only 609 offenses would be used and his
16 testimony would likely not have changed the jury's verdict?

17 (Pertains to Grounds for Relief # 5)

18 5c. Can defendant show deficient performance or prejudice where
19 defendant affirmatively acknowledged that he received a plea offer
20 and he rejected it? (Pertains to Grounds for Relief # 6)

21 5d. Can defendant show deficient performance or prejudice when his
22 offender score would be 9+ no matter how his juvenile offenses
23 were counted? (Pertains to Grounds for Relief # 7)

1 B. STATUS OF PETITIONER:

2 Petitioner, ROBERT RUDNER, hereinafter "defendant," is presently restrained
3 pursuant to a Judgment and Sentence entered in Pierce County Cause No.04-1-03874-1
4 (Judgment and Sentence, Appendix A). Defendant was found guilty after jury trial of two
5 counts of assault in the first degree, burglary in the first degree, robbery in the first
6 degree, unlawful possession of a firearm in the first degree, possession of a stolen firearm,
7 residential burglary, and unlawful possession of a controlled substance. Appendix A.
8 The trial court sentenced defendant to a total of 573 months of confinement. Appendix A.

9 Defendant filed a direct appeal raising two issues: 1) that there was insufficient
10 evidence to find him guilty of two counts of assault in the first degree, and 2) that a
11 unanimity jury instruction should have been given. Appendix B. This Court filed its
12 unpublished opinion on March 4, 2008. Appendix B. This Court found there was
13 sufficient evidence to support the first degree assault conviction against victim Faranda
14 but that it was insufficient for the charge against Riley. Appendix B. This Court also
15 found that a unanimity instruction was not required. Appendix B. This Court remanded
16 for resentencing on second degree assault for the conviction against Riley. Appendix B.

17 Defendant was resentenced on January 2, 2009. Appendix J. The trial court
18 sentenced defendant to a total of 456 months of confinement. Appendix J.

19 This is defendant's first personal restraint petition. The petition is not time-barred.

20 The State has no information to dispute petitioner's claim of indigency.

21 C. GENERAL PERSONAL RESTRAINT PETITION LAW.

22 Personal restraint procedure has its origins in the State's habeas corpus remedy,
23 guaranteed by article 4, section 4 of the State constitution. Fundamental to the nature of
24

1 habeas corpus relief is the principle that the writ will not serve as a substitute for appeal.
2 A personal restraint petition, like a petition for a writ of habeas corpus, is not a substitute
3 for an appeal. *In re Hagler*, 97 Wn.2d 818, 823-24, 650 P.2d 1103 (1982). Collateral
4 relief undermines the principles of finality of litigation, degrades the prominence of the
5 trial, and sometimes costs society the right to punish admitted offenders. These are
6 significant costs, and they require that collateral relief be limited in state as well as federal
7 courts. *Id.*

8 In this collateral action, the petitioner bears the burden of establishing that there is
9 “a fundamental defect which inherently results in a complete miscarriage of justice.” *In*
10 *re Cook*, 114 Wn.2d 802, 812, 792 P.2d 506 (1990). This is a higher standard than the
11 constitutional standard of actual prejudice. *Id.* at 810.

12 In this collateral action, the petitioner has the duty of showing constitutional error
13 and that such error was actually prejudicial. The rule that constitutional errors must be
14 shown to be harmless beyond a reasonable doubt has no application in the context of
15 personal restraint petitions. *In re Mercer*, 108 Wn.2d 714, 718-21, 741 P.2d 559 (1987);
16 *Hagler*, 97 Wn.2d at 825. Mere assertions are insufficient in a collateral action to
17 demonstrate actual prejudice. Inferences, if any, must be drawn in favor of the validity of
18 the judgment and sentence and not against it. *Hagler*, 97 Wn.2d at 825-26. To obtain
19 collateral relief from an alleged nonconstitutional error, a petitioner must show “a
20 fundamental defect which inherently results in a complete miscarriage of justice.” *Cook*,
21 114 Wn.2d at 812. This is a higher standard than the constitutional standard of actual
22

1 prejudice. *Id.* at 810. Reviewing courts have three options in evaluating personal
2 restraint petitions:

- 3 1. If a petitioner fails to meet the threshold burden of showing actual
4 prejudice arising from constitutional error or a fundamental defect
5 resulting in a miscarriage of justice, the petition must be
6 dismissed;
- 7 2. If a petitioner makes at least a prima facie showing of actual
8 prejudice, but the merits of the contentions cannot be
9 determined solely on the record, the court should remand the
10 petition for a full hearing on the merits or for a reference
11 hearing pursuant to RAP 16.11(a) and RAP 16.12;
- 12 3. If the court is convinced a petitioner has proven actual
13 prejudicial error, the court should grant the personal restraint
14 petition without remanding the cause for further hearing.

15 *In re Hews*, 99 Wn.2d 80, 88, 660 P.2d 263 (1983).

16 Because of the costs and risks involved, there is a time limit in which to file a
17 collateral attack. The statute that sets out the time limit provides:

18 No petition or motion for collateral attack on a judgment and sentence in a
19 criminal case may be filed more than one year after the judgment becomes
20 final if the judgment and sentence is valid on its face and was rendered by
21 a court of competent jurisdiction.

22 RCW 10.73.090(1).

23 The petition must include a statement of the facts upon which the claim of unlawful
24 restraint is based and the evidence available to support the factual allegations. RAP
25 16.7(a)(2); *Petition of Williams*, 111 Wn.2d 353, 365, 759 P.2d 436 (1988). If the
petitioner fails to provide sufficient evidence to support his challenge, the petition must be
dismissed. *Id.* at 364.

1 D. ARGUMENT:

- 2 1. THIS COURT SHOULD DISMISS DEFENDANT'S CLAIM
3 THAT HIS CONVICTIONS AND FIREARM ENHANCEMENTS
4 CONSTITUTE DOUBLE JEOPARDY WHERE THE SUPREME
COURT REJECTED THIS ARGUMENT IN *STATE V. KELLEY*.

5 The double jeopardy clause bars multiple punishments for the same offense. *In re*
6 *Borrereo*, 161 Wn.2d 532, 536, 167 P.3d 1106 (2007) (citing U.S. Const. amend. V; Wash.
7 Const. art. I, sec. 9; *State v. Calle*, 125 Wn.2d 769, 776, 888 P.2d 155 (1995)). When a
8 defendant's act supports charges under two statutes, the court must determine whether the
9 legislature intended to authorize multiple punishments for the crimes in question. *Id.* "If
10 the legislature intended that cumulative punishments can be imposed for the crimes, double
11 jeopardy is not offended." *Id.* (citing *State v. Freeman*, 153 Wn.2d 765, 771, 108 P.3d
12 753 (2005)).

13 Legislative intent is the foremost consideration. "The question of what
14 punishments are constitutionally permissible is no different from the question of what
15 punishments the Legislative Branch intended to be imposed. Where Congress intended, as
16 it did here, to impose multiple punishments, imposition of such sentences does not violate
17 the Constitution." *Missouri v. Hunter*, 459 U.S. 359, 386, 103 S. Ct. 673, 74 L. Ed. 2d
18 535 (1983) (emphasis in the original) (citing *Albernaz v. United States*, 450 U.S. 333, 344,
19 101 S. Ct. 1137, 67 L. Ed. 2d 275 (1981)).

20 The Supreme Court recently decided this same issue. In *State v. Kelley*, 168 Wn.2d
21 72, 226 P.3d 773 (2010), the Supreme Court rejected the notion that *Blakely v.*
22 *Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), and *Apprendi v.*
23 *New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), require a new
24 analysis of firearm sentencing enhancements in terms of double jeopardy. Citing clear
25

1 legislative intent, the court found that there was no violation of double jeopardy when a
2 firearm sentencing enhancement is imposed on a crime that has use of a weapon as an
3 element. *Id.* The Supreme Court affirmed this reasoning in ***State v. Aguirre***, 168 Wn.2d
4 350, 229 P.3d 669 (2010) as applied to the addition of a deadly weapon enhancement
5 where the use of a deadly weapon was an element of the crime. As such, defendants'
6 arguments on this issue fail.

7
8 2. THE LEGISLATURE DID NOT INTEND THE CRIMES OF
9 ASSAULT IN THE FIRST DEGREE AND ROBBERY TO
10 MERGE AND AN ANALYSIS OF THE FACTS IN THIS CASE
11 SHOW THAT THE ASSAULT IN THE SECOND DOES NOT
12 VIOLATE DOUBLE JEOPARDY AND DOES NOT MERGE.

13 The double jeopardy clause bars multiple punishments for the same offense. *In re*
14 ***Borrereo***, 161 Wn.2d 532, 536, 167 P.3d 1106 (2007) (*citing* U.S. Const. amend. V; Wash.
15 Const. art. I, sec. 9; ***State v. Calle***, 125 Wn.2d 769, 776, 888 P.2d 155 (1995)). When a
16 defendant's act supports charges under two statutes, the court must determine whether the
17 legislature intended to authorize multiple punishments for the crimes in question. *Id.* "If
18 the legislature intended that cumulative punishments can be imposed for the crimes, double
19 jeopardy is not offended." *Id.* (*citing* ***State v. Freeman***, 153 Wn.2d 765, 771, 108 P.3d
20 753 (2005)).

21 Where the legislature's intent is not expressly stated in the statutes in question,
22 courts turn to the "same evidence" or ***Blockburger*** test. ***Borrereo***, 161 Wn.2d at 536
23 (*citing* ***Blockburger v. United States***, 284 U.S. 299, 304, 52 S. Ct. 180, 76 L. Ed. 306
24 (1932)). Under the same evidence test, double jeopardy is violated if a defendant is
25 convicted of offenses that are identical in fact and in law. ***Borrereo***, 161 Wn.2d at 537
(*citing* ***State v. Louis***, 155 Wn.2d 563, 569, 120 P.3d 936 (2005)); ***Calle***, 125 Wn.2d at

1 777. "If each offense contains an element not contained in the other, the offenses are not
2 the same; if each offense requires proof of a fact that the other does not, the court presumes
3 the offenses are not the same." *Id.* (citing *In re Orange*, 152 Wn.2d 795, 816-18, 100 P.3d
4 291 (2004)); *Calle*, 125 Wn.2d at 777-78.

5 Specifically as to assault and robbery, the Supreme Court has concluded that the
6 legislature intended to punish first degree assault and robbery separately. *Freeman*, 153
7 Wn.2d at 758, 760. The Court also found that the crimes of first degree assault and
8 robbery do not merge. *Id.* at 760. Defendant's argument as it relates to double jeopardy
9 and merger of his first degree assault charge and robbery fails in light of this case law.

10
11 However, the Court in *Freeman* also reviewed if second degree assault and robbery
12 were intended to be punished separately. *Id.* at 758. The Court found that there was no
13 evidence that the legislature intended to punish the crimes separately when the second
14 degree assault facilitated the robbery. *Id.* at 760. However, the Court then turned to an
15 analysis of whether the "included" crime has an independent purpose or effect from the
16 other crime. *Id.* The Court found that the two crimes would merge unless there was an
17 independent purpose or effect. *Id.* The Court determined that in the case of assault in the
18 second degree and robbery, a case by case approach was necessary to determine double
19 jeopardy and merger. *Id.*

20
21 In the instant case, defendant was eventually sentenced to assault in the second
22 degree for victim Riley. Defendant cites to *State v. Zumwalt*, 119 Wn. App. 126, 82 P.3d
23 672 (2003) for the proposition that defendant's convictions should merge. PRP, page 12.
24 However, defendant fails to note that *Zumwalt* was consolidated with *Freeman* at the
25 Supreme Court and that the Supreme Court has held that this is not a bright line rule but

1 must be examined on a case by case basis. *See Freeman*, 153 Wn.2d 765. In *Zumwalt*,
2 the sole basis for the defendant's robbery in the first degree conviction was the second
3 degree assault of the victim where he punched her in the face causing serious injuries. *Id.*
4 at 755. Here, the second degree assault is not what formed the sole basis for defendant's
5 conviction for robbery. Defendant was armed with a firearm and as was an accomplice.
6 This fact alone would have elevated defendant's robbery to the first degree. In addition,
7 there was an assault in the first degree as well as an assault in the second degree. Each
8 victim was assaulted differently, for example, defendant pointed the gun a Riley and then
9 turned the gun on Faranda's head, demanding the keys to the Mustang. *See Appendix B.*
10 Faranda was forced to his knees, execution style, the gun pointed at his head and a "click"
11 was heard. *See Appendix B.* While the assaults could have elevated the robbery, they
12 were not the sole basis and there are facts to support each crime. The crimes do no violate
13 double jeopardy and do not merge. This court should reject defendant's argument.
14

15
16 3. THE IMPOSITION OF ADDITIONAL TIME FOR FIREARM
17 ENHANCEMENTS WAS PROPER WHERE THE STATE
18 ALLEGED FIREARM ENHANCEMENTS IN THE
19 INFORMATION, ASKED THE JURY TO FIND SUCH AN
20 ENHANCEMENT BEYOND A REASONABLE DOUBT, AND
21 THE JURY RETURNED SPECIAL VERDICTS FINDING
22 DEFENDANT WAS ARMED WITH A FIREARM DURING THE
23 COMMISSION OF HIS CRIMES.

21 In order for a sentencing court to impose additional time for a firearm enhancement
22 under RCW 9.94A.533, (formerly RCW 9.94A.310), the State must allege a firearm
23 enhancement in the information and it must submit a special verdict form to the jury asking
24 it whether the defendant was armed with a firearm during the commission of the crime.

25 *State v. Recuenco*, 163 Wn.2d 428, 434-438, 180 P.3d 1276 (2008). If the State alleges a

1 deadly weapon enhancement, as opposed to a firearm enhancement; and submits a special
2 verdict form asking the jury to determine whether defendant was armed with a deadly
3 weapon rather than a firearm, then the court will be limited to imposing the lesser deadly
4 weapon enhancement even though all of the evidence shows that the deadly weapon was,
5 in fact, a firearm. *Id.* at 441. Where the State alleges a firearm enhancement, and the jury
6 returns a verdict finding that the defendant was armed with a firearm at the time of the
7 offense, then a firearm enhancement is properly imposed. *State v. Barnes*, 153 Wn.2d
8 378, 103 P.3d 1219 (2005).

9
10 In this case, defendant was tried upon a second amended information filed on
11 December 6, 2005. Appendix C. The State alleged firearm enhancements on four of the
12 charges contained therein. Appendix C. The charging language on Counts I and II,
13 pertaining to the charges of assault in the first degree, read in the relevant part:

14 That ROBERT RICHARD RUDNER, JR, in the State of Washington, on or
15 about the 6th day of August, 2004, did unlawfully and feloniously with
16 intent to inflict great bodily harm, intentionally assault B. Faranda¹ with a
17 firearm or deadly weapon or by any force or means likely to produce great
18 bodily harm or death, contrary to RCW 9A.36.011(1)(a), and in the
19 commission thereof the defendant, or an accomplice, was armed with a
20 firearm, *to-wit: a handgun, that being a firearm as defined in RCW*
21 *9.41.010, and invoking the provisions of RCW 9.94A.301/9.94A.510 and*
22 *adding additional time to the presumptive sentence as provided in RCW*
23 *9.94A.370/9.94A.530*

24 Appendix C (emphasis added). The charging language on Count III, pertaining to the
25 charge of burglary in the first degree, read in the relevant part:

26 That ROBERT RICHARD RUDNER, JR, in the State of Washington, on or
27 about the 6th day of August, 2004, did unlawfully and feloniously, with
28 intent to commit a crime against a person or property therein, enter or
29 remain unlawfully in a building, located at 2313 S. 96th St, and in entering
30 or while in such a building or in immediate flight therefrom, the defendant

¹ For count II, K. Riley is listed as the victim.

1 or another participant in the crime was armed with a handgun, a deadly
2 weapon, contrary to RCW 9A.52.020(1)(a), *and in the commission thereof*
3 *the defendant, or an accomplice, was armed with a firearm, to-wit: a*
4 *handgun, that being a firearm as defined in RCW 9.41.010, and invoking*
5 *the provisions of RCW 9.94A.310/9.94A.510 and adding additional time to*
6 *the presumptive sentence as provided in RCW 9.94A.370/9.94A.530*

7 Appendix C (emphasis added). The charging language on Count IV, pertaining to the
8 charge of robbery in the first degree, read in the relevant part:

9 That ROBERT RICHARD RUDNER, JR, in the State of Washington, on or
10 about the 6th day of August, 2004, did unlawfully and feloniously take
11 personal property belonging to another with intent to steal from the person
12 or in the presence of B. Faranda and/or K. Riley, the owner thereof or a
13 person having dominion and control over said property, against such
14 person's will by use of or threatened use of immediate force, violence, or
15 fear of injury to B. Faranda and/or K. Riley, said force or fear being used to
16 obtain or retain possession of the property or to overcome resistance to the
17 taking, and in the commission thereof, or in immediate flight therefrom, the
18 defendant was armed with a deadly weapon, *to-wit: a handgun, contrary*
19 *to RCW 9A.56.190 and 9A.56.200(1)(a)(i), and in the commission thereof*
20 *the defendant, or an accomplice, was armed with a firearm, to-wit: a*
21 *handgun, that being a firearm as defined in RCW 9.41.010, and invoking*
22 *the provisions of RCW 9.94A.310/9.94A.510 and adding additional time to*
23 *the presumptive sentence as provided in RCW 9.94A.370/9.94A.530*

24 Appendix C (emphasis added). Defendant was on notice that the State would be seeking a
25 firearm enhancement.

The record does not indicate that defendant was confused about the nature of the
enhancements the State was seeking. He did not file a request for a bill of particulars
asking for clarification; there is no evidence he took exception to the court's wording on
the special verdict forms which, as will be discussed below, asked the jury to determine
whether petitioner was armed with a firearm during the commission of his crimes.

Appendix D. In fact, defendant's attorney did not have any objections to the State's
proposed jury instructions. RP 1000, 1004, Appendix E. The record indicates that
petitioner was properly put on notice that the State was seeking firearm enhancements by
the language in his information.

1 Not only was the information in this case in compliance with *Recuenco*, the special
2 verdict forms also complied with the holding of that case. The jury was given special
3 verdict forms which read:

4 We, the jury, return a special verdict by answering as follows:

5 Was the defendant, Robert Richard Rudner Jr., armed with a
6 firearm at the time of the commission of the crime in Count I?

7 Appendix D. The jury answered this question with a "yes" as to Counts I, II, III and IV.

8 *Id.* As required by *Recuenco*, the State alleged the firearm enhancements in the
9 information and asked the jury whether the defendant was armed with a firearm at the time
10 of the commission of the crime. The jury found that defendant was armed with a firearm
11 during the commission of four crimes. The enhancements were based upon jury
12 determined facts.

13 It is clear that defendant was aware that the jury would be asked to find a firearm
14 enhancement and proposed instructions that comported with that enhancement. The jury
15 instructions proposed by the State and agreed to by the defense were contemplated by the
16 WPICs². See WPIC 2.07.02. The jury was instructed that the State had to prove beyond a
17 reasonable doubt that the defendant or an accomplice was armed with a deadly weapon and
18 the instruction also included that a firearm is a deadly weapon. Appendix F, Instruction
19 45. The fact that instruction 45 referenced a deadly weapon, if error, is harmless error.
20 Appendix F, Instruction 45. The central purpose of a criminal trial is to determine guilt or
21 innocence. *Rose v. Clark*, 478 U.S. 570, 577, 106 S. Ct. 3101, 92 L. Ed. 2d 460 (1986).
22 "Reversal for error, regardless of its effect on the judgment, encourages litigants to abuse
23 the judicial process and bestirs the public to ridicule it." *Neder v. United States*, 527 U.S.
24 1, 17, 119 S. Ct. 1827, 144 L. Ed. 2d 35 (1999) (internal quotation omitted). "[A]
25

1 defendant is entitled to a fair trial but not a perfect one, for there are no perfect trials.”

2 ***Brown v. United States***, 411 U.S. 223, 232, 93 S. Ct. 1565, 36 L. Ed. 2d 208 (1973)

3 (internal quotation omitted).

4 Allowing for harmless error promotes public respect for the law and the criminal
5 process by ensuring a defendant gets a fair trial, but not requiring or highlighting the fact
6 that all trials inevitably contain errors. ***Rose***, 478 U.S. at 577. Thus, the harmless error
7 doctrine allows the court to affirm a conviction when the court can determine that the error
8 did not contribute to the verdict that was obtained. *Id.* at 578; *see also State v. Kitchen*,
9 110 Wn.2d 403, 409, 756 P.2d 105 (1988)(“The harmless error rule preserves an accused’s
10 right to a fair trial without sacrificing judicial economy in the inevitable presence of
11 immaterial error.”).

12 The jury was specifically instructed that they must find the enhancement beyond a
13 reasonable doubt and that the deadly weapon in this case was a firearm. There was no
14 doubt as to what the State was asking them to find. The definition of deadly weapon as
15 stated in the jury instruction was expressly limited to a firearm. As noted above, the
16 special verdict forms pertaining to the enhancements required the jury to find that
17 petitioner was armed with a firearm and not a deadly weapon. Appendix D. Contrary to
18 the instructions proposed in ***Recuenco***, the jury here was instructed that they had to find
19 defendant was armed with a firearm and that they had to make this finding beyond a
20 reasonable doubt. Any mention of a deadly weapon was harmless error.

21 Under ***Recuenco*** and ***Barnes***, the sentencing court could properly impose the
22 enhancement time pertaining to firearms in this case. This case does not run afoul of
23 ***Blakely*** as the sentence was based on facts found by the jury beyond a reasonable doubt
24

25 ² The jury had also been given an instruction as to the definition of firearm pursuant to WPIC 2.10. *See*
Appendix F, Instruction 13.

1 and the judge properly imposed the sentence authorized by the jury. *See State v. Blakely*,
2 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004). The court should affirm the trial
3 court's imposition of enhanced sentences appropriate for firearms. There is no evidence
4 that the judgment in this case was invalid.

5
6 4. DEFENDANT COULD HAVE RAISED THE JURY
7 INSTRUCTION QUESTION ON DIRECT APPEAL. EVEN IF
8 THE COURT ADDRESSES THE ISSUE, THERE IS NO
9 AUTHORITY TO SUPPORT DEFENDANT'S CLAIMED
10 ERRORS.

11 Defendant raised an issue with an unanimity instruction on direct appeal but did not
12 raise any other issues as to instructions. "“This court from its early days has been
13 committed to the rule that questions determined on appeal *or questions which might have*
14 *been determined had they been presented*, will not again be considered on a subsequent
15 appeal in the same case.”” *State v. Bailey*, 35 Wn. App. 592, 594, 668 P.2d 1285 (1983)
16 (*quoting Davis v. Davis*, 16 Wn.2d 607, 609, 134 P.2d 467 (1943))(emphasis added).
17 Because the personal restraint petition process is not a substitute for appeal, the defendant
18 cannot raise a valid issue on collateral attack by simply revising an issue raised and
19 rejected on direct appeal. On this issue, the Washington Supreme Court stated:

20 Simply “revising” a previously rejected legal argument, however, neither
21 creates a “new” claim nor constitutes good cause to reconsider the original
22 claim. As the Supreme Court observed in *Sanders*, “identical grounds
23 may often be proved by different factual allegations. So also, identical
24 grounds may be supported by different legal arguments, . . . or be couched
25 in different language, . . . or vary in immaterial respects”. (Citations
omitted.) *Sanders v. United States*, *supra* at 16. Thus, for example, “a
claim of involuntary confession predicated on alleged psychological
coercion does not raise a different ‘ground’ than does one predicated on
physical coercion”. *Sanders*, at 16.

26 *In re PRP of Jeffries*, 114 Wn.2d 485, 488, 789 P.2d 731 (1990). A claim rejected on its
27 merits on direct appeal will not be reconsidered in a subsequent personal restraint petition
28 unless the petitioner shows that the ends of justice would be served thereby. *Jeffries*, 114

1 Wn.2d at 487. *In re PRP of Brown*, 143 Wn.2d 431, 445, 21 P.3d 687 (2001), citing *In re*
2 *PRP of Lord*, 123 Wn.2d 296, 303, 868 P.2d 835 (1994).

3 Further, defendant did not object to any of the jury instructions. CrR 6.15 requires
4 a party objecting to the giving or refusal of an instruction to state the reason for the
5 objection. The purpose of this rule is to afford the trial court an opportunity to correct any
6 error. *State v. Colwash*, 88 Wn.2d 468, 470, 564 P.2d 781 (1977). Consequently, it is the
7 duty of trial counsel to alert the court to his position and obtain a ruling before the matter
8 will be considered on appeal. *State v. Rahier*, 37 Wn. App. 571, 575, 681 P.2d 1299
9 (1984), citing *State v. Jackson*, 70 Wn.2d 498, 424 P.2d 313 (1967). Only those
10 exceptions to instructions that are sufficiently particular to call the court's attention to the
11 claimed error will be considered on appeal. *State v. Harris*, 62 Wn.2d 858, 872-3, 385
12 P.2d 18 (1963). This court should decline to address defendant's newly recast jury
13 instruction issue.

14 However, should this court decide to address the issues defendant presents, the
15 State asks this court to dismiss defendant's claim because there is no authority for his
16 arguments. Defendant states that the jury had to make a finding that the firearm was
17 operable and that a separate "to-convict" instruction was required for the firearm
18 enhancements. Both arguments fail.

19 First, no instruction on operability is required and defendant does not cite any
20 authority to the contrary. A firearm enhancement is imposed in a criminal case if the
21 offender or an accomplice was armed with a firearm as defined in RCW 9.41.010(1).
22 RCW 9.94A.533. "Firearm" means a weapon or device from which a projectile or
23 projectiles may be fired by an explosive such as gunpowder. RCW 9.41.010(1).
24 Defendant does not claim that the firearm in the case was inoperable, merely that the jury
25 was not properly instructed. However, even if a weapon is inoperable, it is nonetheless a

1 firearm within the meaning of RCW 9.41.010(1) as long as it is a real gun. *State v. Faust*,
2 93 Wn. App. 373, 380, 967 P.2d 1284 (1998). Test firing is not required. *State v.*
3 *Anderson*, 94 Wn. App. 151, 162-63, 971 P.2d 585 (1999), *rev'd on other grounds*, 141
4 Wn.2d 357, 5 P.3d 1247 (2000)(trier of fact could find gun was a firearm where two
5 experienced officers testified the gun was loaded, appeared to be a real gun, the gun
6 displayed a serial number and was admitted as an exhibit at trial). An unloaded gun is still
7 a deadly weapon. *Faust*, 93 Wn. App. at 380-1 (internal citations omitted.)

8 Additionally, while “a gun rendered *permanently* inoperable is not a firearm under
9 the statutory definition [,]” a gun that is temporarily malfunctioning, requires assembly, or
10 lacks bullets meets the statutory definition of a firearm. *State v. Padilla*, 95 Wn. App. 531,
11 535, 978 P.2d 1113 (1999)(emphasis in original); *State v. Berrier*, 110 Wn. App. 639, 645,
12 41 P.3d 1198 (2002); *Faust*, 93 Wn. App. at 381.

13 In addition, the court in *State v. Pam*, 98 Wn.2d 748, 659 P.2d 454 (1983),
14 *overruled in part on other grounds by State v. Brown*, 111 Wn.2d 124, 761 P.2d 588
15 (1988), “attempted to distinguish between a true firearm and a ‘gun-like object incapable
16 of being fired.’” *Faust*, 93 Wn. App. at 379. In *Pam*, the defendant had a gun like object
17 that fell apart as he ran away. *Pam*, 98 Wn.2d at 751, 754. The court in *Pam* found that a
18 “gun-like object” was not a firearm. *Id.* (Citing *Pam*, 98 Wn.2d at 753-54.). Further, the
19 court found that as the jury was not instructed that they had to find the firearm or deadly
20 weapon enhancement beyond a reasonable doubt that the jury could have had a reasonable
21 doubt as to the operability of the weapon. *Id.* at 752-5.

22 Defendant does not dispute that the guns in this case were real. In fact, there was
23 testimony that the gun defendant had in his possession had been from West Point military
24 academy and was engraved. RP 474, 494, 498, 671-2. There was also testimony from a
25 forensic scientist with the Washington State Crime Laboratory that the gun was operable.

1 RP 900. Operability is way for the State to show a gun is real, not an element that has to
2 be proved to the jury. There was no dispute that the gun was real and capable of being
3 fired. An instruction regarding operability was not required. There is no error.

4 Further, there is no requirement for a “to-convict” instruction for the firearm
5 enhancement. As shown above, the jury was given concluding instructions and special
6 verdict forms as contemplated by the WPICs. The jury was required to find the special
7 verdicts beyond a reasonable doubt. There is no authority, and defendant has not cited any,
8 that the jury be given separate “to-convict” instructions for an enhancement. Defendant’s
9 argument fails.
10

11 5. DEFENDANT RECEIVED CONSTITUTIONALLY EFFECTIVE
12 ASSISTANCE OF COUNSEL AS DEFENDANT CANNOT SHOW
13 DEFICIENT PERFORMANCE OR PREJUDICE.

14 The right to effective assistance of counsel is found in the Sixth Amendment to the
15 United States Constitution, and in Article 1, Sec. 22 of the Constitution of the State of
16 Washington. The right to effective assistance of counsel is the right “to require the
17 prosecution’s case to survive the crucible of meaningful adversarial testing.” *United*
18 *States v. Cronin*, 466 U.S. 648, 656, 104 S. Ct. 2045, 80 L. Ed. 2d 657 (1984). When such
19 a true adversarial proceeding has been conducted, even if defense counsel made
20 demonstrable errors in judgment or tactics, the testing envisioned by the Sixth Amendment
21 has occurred. *Id.* The court has elaborated on what constitutes an ineffective assistance of
22 counsel claim. The court in *Kimmelman v. Morrison*, 477 U.S. 365, 374, 106 S. Ct. 2574,
23 2582, 91 L. Ed. 2d 305 (1986), stated that “the essence of an ineffective-assistance claim is
24 that counsel’s unprofessional errors so upset the adversarial balance between defense and
25 prosecution that the trial rendered unfair and the verdict rendered suspect.”

1 The test to determine when a defendant's conviction must be overturned for
2 ineffective assistance of counsel was set forth in *Strickland v. Washington*, 466 U.S. 668,
3 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), and adopted by the Washington Supreme
4 Court in *State v. Jeffries*, 105 Wn.2d 398, 418, 717 P.2d 722, *cert. denied*, 497 U.S. 922
5 (1986). The test is as follows:

6 First, the defendant must show that the counsel's performance was
7 deficient. This requires showing that counsel made errors so serious that
8 counsel was not functioning as "counsel" guaranteed the defendant by the
Sixth Amendment

9 Second, the defendant must show that the deficient performance
10 prejudiced the defense. This requires showing that counsel's errors were so
11 serious as to deprive the defendant of a fair trial, a trial whose result is
12 reliable. Unless a defendant makes both showings, it cannot be said that the
conviction . . . resulted from a breakdown in the adversary process that
renders the result unreliable.

13 *Id.* See also *State v. Walton*, 76 Wn. App. 364, 884 P.2d 1348 (1994), *review*
14 *denied*, 126 Wn.2d 1024 (1995); *State v. Denison*, 78 Wn. App. 566, 897 P.2d 437, *review*
15 *denied*, 128 Wn.2d 1006 (1995); *State v. McFarland*, 127 Wn.2d 322, 899 P.2d 1251
16 (1995); *State v. Foster*, 81 Wn. App. 508, 915 P.2d 567 (1996), *review denied*, 130 Wn.2d
17 100 (1996).

18 *State v. Lord*, 117 Wn.2d 829, 883, 822 P.2d 177 (1991), *cert. denied*, 506 U.S. 56
19 (1992), further clarified the intended application of the *Strickland* test.

20 There is a strong presumption that counsel have rendered adequate
21 assistance and made all significant decisions in the exercise of reasonably
22 professional judgment such that their conduct falls within the wide range of
23 reasonable professional assistance. The reasonableness of counsel's
challenged conduct must be viewed in light of all of the circumstances, on
the facts of the particular case, as of the time of counsel's conduct.

24 Under the prejudice aspect, "[t]he defendant must show that there is a reasonable
25 probability that, but for counsel's unprofessional errors, the result of the proceeding would

1 have been different.” *Strickland*, 466 U.S. at 694. Because the defendant must prove both
2 ineffective assistance of counsel and resulting prejudice, the issue may be resolved upon a
3 finding of lack of prejudice without determining if counsel’s performance was deficient.
4 *Strickland*, 466 U.S. at 697, *Lord*, 117 Wn.2d at 883-884.

5 Competency of counsel is determined based upon the entire record below.
6 *McFarland*, 127 Wn.2d at 335 (citing *State v. White*, 81 Wn.2d 223, 225, 500 P.2d 1242
7 (1972)). The reviewing court must judge the reasonableness of counsel’s actions “on the
8 facts of the particular case, viewed as of the time of counsel’s conduct.” *Strickland*, 466
9 U.S. at 690; *State v. Benn*, 120 Wn.2d 631, 633, 845 P.2d 289 (1993), *cert. denied*, 510
10 U.S. 944 (1993). Defendant has the “heavy burden” of showing that counsel’s
11 performance was deficient in light of all surrounding circumstances. *State v. Hayes*, 81
12 Wn. App. 425, 442, 914 P.2d 788, *review denied*, 130 Wn.2d 1013, 928 P.2d 413 (1996).
13 Judicial scrutiny of a defense attorney’s performance must be “highly deferential in order
14 to eliminate the distorting effects of hindsight.” *Strickland*, 466 U.S. at 689.

15
16 Defendant alleged multiple instances where he believes his counsel was ineffective.
17 However, defendant cannot show deficient performance by his counsel nor can he show
18 actual prejudice. Defendant’s claims must be dismissed.
19

20 a. Defense counsel not required to object to instructions.

21 Defendant, in passing, claims that his counsel was ineffective for failing to object to
22 the jury instructions in that there should have been a “to-convict” instruction with the
23 “element” of operability for the firearm enhancement. *See* PRP, page 15. However, as
24 discussed above, there is no authority requiring such an instruction and the jury was
25

1 instructed as contemplated by the WPICs. There was no requirement for defense counsel
2 to object.

- 3
4 b. The record shows that the admission of defendant's criminal
5 history was limited to 609 offenses and it is unreasonable to
6 assume that defendant's testimony would have changed the
7 outcome of the trial.

8 Defendant now claims he would have testified if he knew that not all of his
9 previous criminal history would be introduced to the jury. However, a review of
10 defendant's criminal history reveals numerous 609 offenses. Appendix G. The fact that
11 not all of the crimes would have been used but still a significant number would have been
12 negligible in terms of its impact on defendant's choice to testify. In addition, there is
13 evidence that the State notified the defense that they would only use 609 offenses.
14 Appendix H. Defendant himself signed the Omnibus Order that indicated this. Appendix
15 H. There is no evidence to support defendant's claim of being misinformed.

16 Defendant is clear that he is not challenging his counsel's advice not to testify and
17 admits that it was "well within the range of competence." *See* PRP, page 18. Defendant
18 did have many 609 offenses that would have been introduced to the jury. In addition, there
19 is nothing that supports the premise that had defendant testified it would have changed the
20 result. In defendant's own declaration, he states that he is guilty of most of what he is
21 accused of. PRP, Appendix F. Defendant states that he went to do a robbery, that he was
22 willing to use force or the threat of force to accomplish the robbery but that he did not hold
23 the gun to anyone's head or pull the trigger. *Id.* Defendant admits having a gun but
24 claimed that the gun didn't even have the clip in it. *Id.*

1 When the police responded to the scene and detained defendant, he had a gun clip
2 under his stomach. RP 581. He also had a second empty gun clip in his pocket and two
3 bullets in his pants pocket. RP 519-30. Defendant used the gun to hit one of the victim's
4 in the face when he tried to subdue him. RP 597, 603. Co-defendant Arnestad, victim
5 Riley and victim Faranda testified at trial that defendant pointed the gun at Farnada's head.
6 RP 589, 719, 721, 836, 839, 845. Victim Faranda testified that the gun was pointed at his
7 head when he heard a click. RP 597. Riley heard and saw the same thing. RP 847.
8 Defendant was armed, did use force, and did admit to holding a gun. In fact, he used the
9 gun to hit the victim when the victim tried to subdue him. Defendant's testimony admits
10 most of the elements of the crime and in light of all the other evidence; it's difficult to see
11 how this would have changed the result. Defendant cannot show deficient performance or
12 prejudice.
13

14
15 c. There is evidence defendant was offered a plea deal and
16 rejected the plea bargain.

17 Defendant claims that his counsel was ineffective for failing to advise him of the
18 time he faced and in failing to discuss a plea bargain with him. PRP, page 25, *see also*
19 PRP, Appendix F. However, there is evidence in the record that contradicts defendant's
20 claim. A status conference form was filed on April 7, 2005. Appendix I. On the Status
21 Conference form, the box is checked indicating that a plea offer had been made, that the
22 defendant had been informed and that the offer had been declined. Appendix I. That
23 paragraph is initialed by the defendant, his counsel and the prosecutor. Defendant also
24 signed the form. Appendix I. There is clear evidence that defendant had been made aware
25

1 of a plea offer and had rejected it. Defendant cannot show deficient performance or
2 prejudice.

- 3
4 d. There is no prejudice to defendant as his offender score would
5 remain 9+ even if his Washington juvenile offense were
6 counted as 1.5 points.

7 When the ineffectiveness allegation is premised upon counsel's failure to litigate a
8 motion or objection, defendant must demonstrate not only that the legal grounds for such a
9 motion or objection were meritorious, but also that the verdict would have been different if
10 the motion or objections had been granted. *United States v. Kimmelman*, 477 U.S. 365,
11 375, 106 S. Ct. 2574, 91 L. Ed. 2d 305 (1986); *United States v. Molina*, 934 F.2d 1440,
12 1447-48 (9th Cir. 1991). Defendant claims that six of his juvenile offenses that were
13 counted separately should have really have been grouped together so that instead of being
14 counted as 3 points, they counted as 1.5 points³. PRP, page 28-9. However, even if that
15 were true, defendant still would have an offender score of 9 instead of a 10.5 and that does
16 not include the 8 current offenses he was sentenced on. Appendix G. Defendant's
17 offender score would never have been below a 9. His offender score, no matter which way
18 you look at it, is a 9+. Defendant affirmatively stipulated to his offender score when he
19 signed the form and the court was entitled to rely on the stipulation. Appendix G. There is
20 no basis for a remand for resentencing as the result would not change. Defendant was not
21 prejudiced and cannot show that counsel was ineffective.

22
23
24
25

³ The State is not conceding that defendant's calculation is correct. The State is only pointing out that the situation is moot and does not require a new sentencing hearing.

1 D. CONCLUSION:

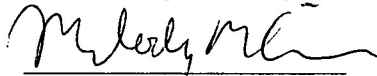
2 Defendant has not made a showing of any miscarriage of justice, deficient
3 performance or prejudice that warrants granting his petition ore remanding for a reference
4 hearing. The State respectfully requests that this court dismiss this personal restraint
5 petition.

6
7 DATED: June 20, 2010.

8 MARK LINDQUIST

9 Pierce County

Prosecuting Attorney

10 

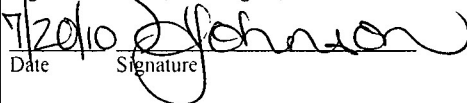
11 MELODY M. CRICK

Deputy Prosecuting Attorney

WSB #35453

13 Certificate of Service:

14 The undersigned certifies that on this day she delivered by U.S. mail
15 to petitioner true and correct copies of the document to which this certificate
is attached. This statement is certified to be true and correct under
16 penalty of perjury of the laws of the State of Washington.
Signed at Tacoma, Washington, on the date below.

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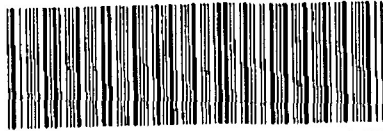
Date Signature

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COURT OF APPEALS
DIVISION II
10 JUL 20 PM 4:09
STATE OF WASHINGTON
BY _____
DEPUTY

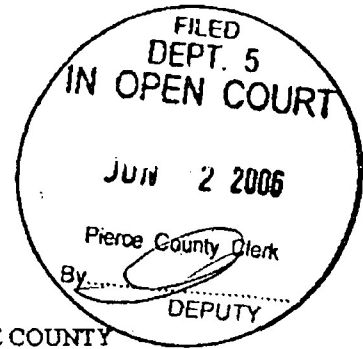


APPENDIX “A”

Judgment and Sentence



04-1-03874-1 25583393 JDSWCD 06-08-08



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 04-1-03874-1

vs.

ROBERT RICHARD RUDNER, JR.,

Defendant.

WARRANT OF COMMITMENT

- 1) ☐ County Jail
2) ☒ Dept. of Corrections
3) ☐ Other Custody

JUN 02 2006

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

[] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).

X 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections, and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Department of Corrections custody).

04-1-03874-1

[] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for
classification, confinement and placement as ordered in the Judgment and Sentence.
(Sentence of confinement or placement not covered by Sections 1 and 2 above).

Dated: 6-2-06
4-28-06

By direction of the Honorable

Vicki L. Hogan
JUDGE
KEVIN STOCK

CLERK

By:

B. Knight
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

JUN 02 2006

B. Knight

DEPT. 5
IN OPEN COURT

JUN 2 2006

Pierce County Clerk

By:

DEPUTY

STATE OF WASHINGTON

ss:

County of Pierce

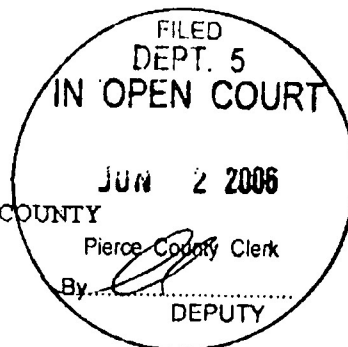
I, Kevin Stock, Clerk of the above entitled
Court, do hereby certify that this foregoing
instrument is a true and correct copy of the
original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my
hand and the Seal of Said Court this
_____ day of _____.

KEVIN STOCK, Clerk

By: _____ Deputy

kls

04-1-03874-1



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 04-1-03874-1

vs.

ROBERT RICHARD RUDNER, JR.

Defendant.

JUDGMENT AND SENTENCE (JS)

- ☒ Prison
☐ Jail One Year or Less
☐ First-Time Offender
☐ SSOSA
☐ DOSA
☐ Breaking The Cycle (BTC)

SID: WA16146653
DOB: 05/10/77

JUN 02 2006

I. HEARING

- 1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:




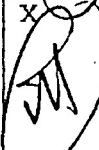
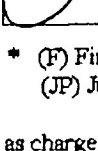
- 2.1 CURRENT OFFENSE(S): The defendant was found guilty on 2-22-06
by ☐ plea ☒ jury verdict ☐ bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	ASSAULT IN THE FIRST DEGREE (E23)	9A.36.011(1)(a) 9.94A.310/9.94A.510 9.94A.370/9.94A.530 9.41.010	FASE	08/06/04	042190171
II	ASSAULT IN THE FIRST DEGREE (E23)	9A.36.011(1)(a) 9.94A.310/9.94A.510 9.94A.370/9.94A.530 9.41.010	FASE	08/06/04	042190171
III	BURGLARY IN THE	9A.52.020(1)(a)	FASE	08/06/04	042190171

JUDGMENT AND SENTENCE (JS)
(Felony) (6/19/2003) Page 1 of 12

06-9-06503-5

Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
	FIRST DEGREE (G1)	9A.52.020(1)(a) 9.41.010 9.94A.310/9.94A.510 9.94A.370/9.94A.530			
IV 	ROBBERY IN THE FIRST DEGREE (AAA1)	9A.56.200(1)(a)(i) 9.94A.310/9.94A.510 9.94A.370/9.94A.530 9.41.010	FASE	08/06/04	042190171
V 	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE (GGG66)	9A.1.040(1)(a)	NONE	08/06/04	042190171
VI 	POSSESSION OF A STOLEN FIREARM (BBB12)	9A.56.140(1) 9A.56.310(1)	NONE	08/06/04	042190171
IX 	RESIDENTIAL BURGLARY (B12)	9A.52.025	NONE	08/01/04	042190171
X 	UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE (J73M); Methamphetamine; Schedule II	69.50.4013	NONE	08/01/04	042190171

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Horn, See RCW 46.61.520, (JP) Juvenile present.

as charged in the JURY VERDICT Information

- ☒ A special verdict/finding for use of firearm was returned on Count(s) I, II, III, IV RCW 9.94A.602, .510.
- ☐ The court finds that the offender has a chemical dependency that has contributed to the offense(s). RCW 9.94A.
- ☐ Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- ☐ Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	TMVWOP	10/23/91	Ventura, CA		Juv	NV
2	BURG 2	12/16/92	Clallam Co.	09/07/92	Juv	NV
3	TMVWOP	12/16/92	Clallam Co.	11/01/92	Juv	NV
4	THEFT 2	03/02/94	Clallam Co.	07/30/93	Juv	NV

04-1-03874-1

5	VEH PROWL 1	03/02/94	Clallam Co.	07/30/93	Juv	NV
6	UPOF	01/11/95	Clallam Co.	12/19/94	Juv	NV
7	THEFT OF F/A	01/11/95	Clallam Co.	12/19/94	Juv	NV
8	UPOF	06/25/96	Clallam Co.	02/29/96	A	NV
9	ESCAPE 1	11/22/96	Clallam Co.	09/13/96	A	NV
10	ATT ELUDE	04/19/99	Kitsap Co.	01/28/98	A	NV
11	FORGERY	05/25/00	Clallam Co.	01/14/00	A	NV
12	MAL MISCH 2	02/19/02	Clallam Co.	12/28/01	A	NV
13	ATT ELUDE	Current	Pierce Co.	01/17/04	A	NV
14	UPOF 2	Current	Pierce Co.	01/17/04	A	NV

[] The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	9+	XII	240-318 MOS.	60 MOS.	300-378 MOS.	LIFE
II	9+	XII	93-123 MOS.	60 MOS.	153-183 MOS.	LIFE
III	9+	VII	87-116 MOS.	60 MOS.	147-176 MOS.	LIFE
IV	9+	IX	129-171 MOS.	60 MOS.	189-231 MOS.	LIFE
V	9+	VII	87-116 MOS.	NONE	87-116 MOS.	10 YRS.
VI	9+	V	72-96 MOS.	NONE	72-96 MOS.	10 YRS.
IX	9+	IV	63-84 MOS.	NONE	63-84 MOS.	10 YRS.
X	9+	I	12+-24 MOS.	NONE	12+-24 MOS.	5 YRS.

2.4 [] **EXCEPTIONAL SENTENCE.** Substantial and compelling reasons exist which justify an exceptional sentence [] above [] below the standard range for Count(s) _____. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney [] did [] did not recommend a similar sentence.

2.5 **LEGAL FINANCIAL OBLIGATIONS.** The judgment shall upon entry be collectable by civil means, subject to applicable exemptions set forth in Title 6, RCW. Chapter 379, Section 22, Laws of 2003.

[] The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

[] The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

04-1-03874-1

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are ☐ attached ☐ as follows:

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.

3.2 ☐ The court DISMISSES Counts _____ ☐ The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTN/RJN

\$ LOC

Restitution to: _____

\$ _____

Restitution to: _____

(Name and Address--address may be withheld and provided confidentially to Clerk's Office).

PCV

\$ 500.00 Crime Victim assessment

DNA

~~\$ 100.00 DNA Database Fee~~

PUB

\$ 1500 Court-Appointed Attorney Fees and Defense Costs

FRC

\$ 110.00 Criminal Filing Fee

FCM

\$ _____ Fine

CDF/DFA-DFZ

\$ _____ Drug Investigation Fund for _____ (agency)

WFR

\$ _____ Witness Costs

MTH

\$ _____ Methamphetamine Cleanup (\$3,000 minimum)

JFR

\$ _____ Jury Fee

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____

Other Costs for: _____

\$ _____

Other Costs for: _____

\$ 2110

\$ 2210 TOTAL

☒ All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ _____ per month commencing _____. RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

4.2 RESTITUTION

☒ The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

04-1-03874-1

[] shall be set by the prosecutor.

[X] is scheduled for

7-21-06

130

26

[X] defendant waives any right to be present at any restitution hearing (defendant's initials):

EF

[] RESTITUTION. Order Attached

[X] Restitution ordered above shall be paid jointly and severally with:

NAME of other defendant	CAUSE NUMBER	(Victim name)	(Amount-\$)
RJN	AUTUMN ARNESTADT		

4.3 COSTS OF INCARCERATION

[] In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

4.4 COLLECTION COSTS

The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

4.5 INTEREST

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

4.6 COSTS ON APPEAL

An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW. 10.73.

4.7 [] HIV TESTING

The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.8 [X] DNA TESTING

The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

4.9 NO CONTACT

The defendant shall not have contact with B. Farley, J. A. Oakes, G. Griffin (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for 4-14-64 years (not to exceed the maximum statutory sentence).

[] Domestic Violence Protection Order or Antiharassment Order is filed with this Judgment and Sentence.

4.10 OTHER:

04-1-03874-1

4.11 BOND IS HEREBY EXONERATED

4.12 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

(a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

<u>240</u> months on Count I	<u>87</u> months on Count V
<u>93</u> months on Count II	<u>72</u> months on Count VI
<u>116</u> months on Count III	<u>63</u> months on Count IX
<u>129</u> months on Count IV	<u>24</u> months on Count X

A special finding/verdict having been entered as indicated in Section 2.1, the defendant is sentenced to the following additional term of total confinement in the custody of the Department of Corrections:

<u>60</u> months on Count No I	<u>60</u> months on Count No IV
<u>60</u> months on Count No II	_____ months on Count No _____
<u>60</u> months on Count No III	_____ months on Count No _____

Sentence enhancements in Counts I, II, III + IV shall run
☐ concurrent ☒ consecutive to each other.
 Sentence enhancements in Counts _____ shall be served
☒ flat time ☐ subject to earned good time credit

Actual number of months of total confinement ordered is:

573 months.

(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

The sentence herein shall run consecutively to all felony sentences in other cause numbers prior to the commission of the crime(s) being sentenced. _____

04-1-03874-1

Confinement shall commence immediately unless otherwise set forth here: _____

(b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: 695 days

4.13 ☐ COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

Count _____ for _____ months;

Count _____ for _____ months;

Count _____ for _____ months;

☐ COMMUNITY CUSTODY is ordered as follows:

Count I for a range from: 24 to 48 Months;

Count II for a range from: 24 to 48 Months;

Count III for a range from: 18 to 36 Months;

Count IV for a range from: 24 to 48 Months;

Count V for a range from: Ø to Ø Months;

Count VI for a range from: Ø to Ø Months;

Count IX for a range from: Ø to Ø Months;

Count X for a range from: 12 to 24 Months;

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A for community placement offenses -- serious violent offense, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offense. Community custody follows a term for a sex offense -- RCW 9.94A. Use paragraph 4.7 to impose community custody following work ethic camp.]

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community service; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

☐ The defendant shall not consume any alcohol.

☐ Defendant shall have no contact with: _____

04-1-03874-1

- 1
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- 8
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- 16
- 17
- 18
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- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- ☒ Defendant shall remain ☒ within ☐ outside of a specified geographical boundary, to wit: Per CCW
- ☒ The defendant shall participate in the following crime-related treatment or counseling services: Per CCW
- ☐ The defendant shall undergo an evaluation for treatment for ☐ domestic violence ☐ substance abuse
- ☐ mental health ☐ anger management and fully comply with all recommended treatment.
- ☒ The defendant shall comply with the following crime-related prohibitions: See Appendix F

Other conditions may be imposed by the court or DOC during community custody, or are set forth here: _____

- 4.14 ☐ **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.13.
- 4.15 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: _____

V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.
- 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505.
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.7602.
- 5.4 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.
- 5.5 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.
- 5.6 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200. N/A

04-1-03874-1

5.7 OTHER:

(X) Appendix H F

DONE in Open Court and in the presence of the defendant this date: ~~4-28-06~~ 6-2-06.

JUDGE

Print name

Vicki Hogan
Vicki Hogan

Deputy Prosecuting Attorney

Print name: GREG GREER

WSB # 22936

Attorney for Defendant

Print name: Ephraim Benjamin

WSB # 23616

Defendant

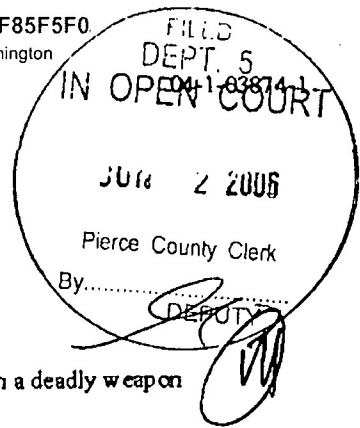
Print name: Robert Richard Rudner Jr.

FILED
DEPT. 5
IN OPEN COURT

JUN 2 2006

Pierce County Clerk

By: DEPUTY



APPENDIX "F"

The defendant having been sentenced to the Department of Corrections for a:

- ☒ sex offense
- ☒ serious violent offense
- ☒ assault in the second degree
- ☒ any crime where the defendant or an accomplice was armed with a deadly weapon
- ☐ any felony under 69.50 and 69.52

The offender shall report to and be available for contact with the assigned community corrections officer as directed:

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions:

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC:

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

- ☒ (I) The offender shall remain within, or outside of, a specified geographical boundary: Per CCO.
- ☒ (II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: _____
- ☒ (III) The offender shall participate in crime-related treatment or counseling services;
- ☒ (IV) The offender shall not consume alcohol; _____
- ☐ (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections, or
- ☒ (VI) The offender shall comply with any crime-related prohibitions.
- ☐ (VII) Other: _____

Case Number: 04-1-03874-1 Date: July 20, 2010
SerialID: F1B42519-F20D-AA3E-5626B7BCEF85F5F0
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

04-1-03874-1

CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 04-1-03874-1

I, KEVIN STOCK Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: _____

Clerk of said County and State, by: _____, Deputy Clerk

04-1-03874-1

IDENTIFICATION OF DEFENDANT

SID No. WA16146653
(If no SID take fingerprint card for State Patrol)

Date of Birth 05/10/77

FBI No. 940751XA3

Local ID No. UNKNOWN

PCN No. 538187216

Other

Alias name, SSN, DOB: ROBERT RICHARD RUONER

Race:

☐ Asian/Pacific
Islander

☒ Black/African-
American

☐ Caucasian

Ethnicity:

☐ Hispanic

Sex:

☒ Male

☐ Native American

☐ Other: :

☒ Non-
Hispanic

☐ Female

FINGERPRINTS

Left four fingers taken simultaneously

Left Thumb

Right Thumb

Right four fingers taken simultaneously

I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, Linda Schumann

DEFENDANT'S SIGNATURE: Robert Ruoner

DEFENDANT'S ADDRESS:

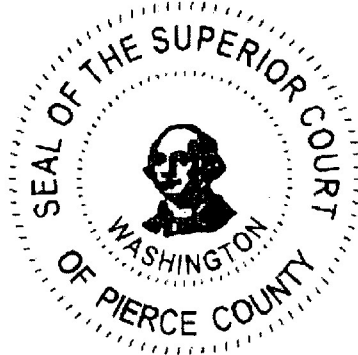
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that the document
SerialID: F1B42519-F20D-AA3E-5626B7BCEF85F5F0 containing 15 pages
plus this sheet, is a true and correct copy of the original that is of record in my
office and that this image of the original has been transmitted pursuant to
statutory authority under RCW 5.52.050. In Testimony whereof, I have
electronically certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/Chris Hutton, Deputy.

Dated: Jul 20, 2010 2:13 PM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted electronically by the Court, sign on to: <https://www.co.pierce.wa.us/cfapps/secure/linux/courtfilling/certifieddocumentview.cfm>, enter **SerialID: F1B42519-F20D-AA3E-5626B7BCEF85F5F0**. The copy associated with this number will be displayed by the Court.

APPENDIX “B”

Court’s Opinion on Direct Appeal



04-1-03874-1 30975255 MNDCA 11-24-08

Case Number: 04-1-03874-1 Date: July 20, 2010
 ID: F1B42669-F20F-6452-D74640D464273596
 Certified By: Kevin Stock Pierce County Clerk, Washington

20637 11/25/2008 19126

FILED
 IN COUNTY CLERK'S OFFICE

A.M. NOV 24 2008 P.M.

PIERCE COUNTY, WASHINGTON
 KEVIN STOCK, County Clerk
 BY _____ DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

ROBERT RUDNER,

Appellant.

No. 34958-2-II

MANDATE

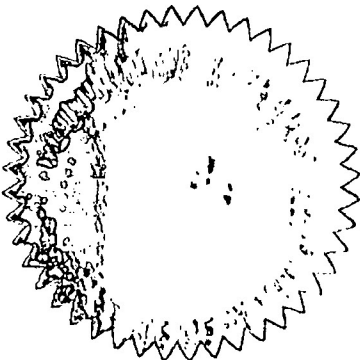
Pierce County Cause No.
 04-1-03874-1

Court Action Required

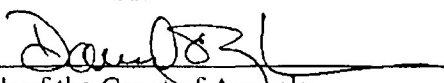
The State of Washington to: The Superior Court of the State of Washington
 in and for Pierce County

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division II, filed on March 4, 2008 became the decision terminating review of this court of the above entitled case on November 5, 2008. Accordingly, this cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

Court Action Required: The sentencing court or criminal presiding judge is to place this matter on the next available motion calendar for action consistent with the opinion.



IN TESTIMONY WHEREOF, I have hereunto set
 my hand and affixed the seal of said Court at
 Tacoma, this 14th day of November, 2008.


 Clerk of the Court of Appeals,
 State of Washington, Div. II



CASE #: 34958-2-II

State of Washington, Respondent, v. Robert Rudner, Appellant

Mandate – Page 2

Hon. Vicki Hogan
Pierce County Superior Court
930 Tacoma Avenue South
Tacoma, WA 98402

Indeterminate Sentence Review Board

Carol A Elewski
Attorney at Law
PO Box 4459
Tumwater, WA, 98501-0459

Michelle Hyer
Pierce County Prosecutor
930 Tacoma Ave S Rm 946
Tacoma, WA, 98402-2102

WSP Identification & Criminal History Section
ATTN: Quality Control Unit
PO Box 42633
Olympia, WA 98504-2633



28637 11/25/2000 10120

Case Number: 04-1-03874-1 Date: July 20, 2010

SerialID: F1B42669-F20F-6452-D74640D464273596

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

FILED
COURT OF APPEALS
DIVISION II

08 MAR -4 AM 8:25

STATE OF WASHINGTON

BY sp
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

ROBERT RICHARD RUDNER JR.

Appellant.

No. 34958-2-II

UNPUBLISHED OPINION

BRIDGEWATER, P.J. — Robert Richard Rudner Jr. appeals his convictions for two counts of first degree assault. We hold that there was sufficient evidence to prove he intended to inflict great bodily harm against Brian Faranda by placing him in an execution kneeling position, pointing a gun at his head, and pulling the trigger. But the evidence is insufficient to prove that he had the intent to inflict great bodily harm against Kimberly Riley merely by pointing the gun at her without threats of death, firing the gun, or placing her in an execution kneeling position. We hold also that there was no need for a unanimity instruction. Thus, we affirm the conviction for first degree assault involving Faranda (count I). We vacate the conviction for first degree assault against Riley (count II), but direct the entry of a judgment of guilt for second degree assault against Riley. We remand for resentencing.



34958-2-II

I. FACTS¹

On August 6, 2004, Desmond Berry² asked Autumn Arnestad to help him rob his acquaintance, Brian Faranda, by taking the keys to Faranda's Ford Mustang.³ That night, Arnestad entered Faranda's home through the sliding glass door on the second floor balcony. Arnestad then let Berry and Rudner in through the front door. Faranda and his girlfriend, Kimberly Riley, were sleeping on the couch. Arnestad had in her possession a .9 millimeter Beretta that she stole earlier that day, which she gave to Rudner along with clips loaded with ammunition. Rudner pointed the gun at Riley and asked for the keys to Faranda's Mustang. Meanwhile, Arnestad ordered Faranda to get on his knees, putting his hands behind his head as she went through his pockets. Rudner turned the gun to Faranda's head and aggressively repeated his demand for the keys to the Mustang.

Riley saw Rudner pull the trigger on the gun while aiming it at Faranda's head. Faranda, who is familiar with guns, heard a "click" that sounded like either an "accidental trigger pull or a de-cock mechanism." 6 RP at 597. Riley screamed that she and Faranda would not get killed without a fight, and jumped on Arnestad. Faranda tried to get the gun away from Rudner, but

¹ In addition to the incident described herein, the State presented evidence at trial that Rudner committed three other burglaries, including a theft where he left behind a backpack containing marijuana, methamphetamine, ammunition and a cell phone bill in his name. Rudner does not challenge this evidence.

² Though it appears that Desmond Berry's involvement is undisputed, Berry was not charged with this crime, nor did he appear as a witness at Rudner's trial.

³ Faranda did not actually own a Ford Mustang. Berry mistook Faranda's Thunderbird for a Mustang.



34958-2-II

Rudner hit him in the face with it, and "kept swinging, swinging away with the pistol." 6 RP at 603. Arnestad stole Riley's purse and fled, while Faranda was able to subdue Rudner. As a result of the altercations, Riley sustained a gash on her eye while Faranda suffered a broken nose and received two stitches in his eye and six on his forehead.

At trial, the court instructed the jury that it could find Rudner guilty of first degree assault if it determined that he intended to inflict great bodily harm upon both Faranda and Riley beyond a reasonable doubt.⁴ Rudner did not object to the instruction. The jury found Rudner guilty on all charges, and concluded he was armed with a firearm during the commission of the two counts of first degree assault. The court sentenced Rudner to 573 months.

ANALYSIS

I. SUFFICIENCY OF EVIDENCE

Rudner argues that there was insufficient evidence at trial to convict him of first degree assault of either Faranda or Riley. The State maintains that the prosecution presented sufficient evidence of all elements of both first degree assaults to the jury, including intent to inflict great bodily harm.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be

⁴ Rudner does not dispute any other jury instructions on appeal.

34958-2-II

drawn therefrom.” *Salinas*, 119 Wn.2d at 201. Circumstantial and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

Credibility determinations are for the trier of fact and are not subject to review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). This court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533, *review denied*, 119 Wn.2d 1011 (1992).

The prosecution must prove intent to inflict great bodily harm in order to establish first degree assault. RCW 9A.36.011.⁵ The trier of fact ascertains “intent” by determining whether a person acts with the “objective or purpose to accomplish a result which constitutes a crime.” RCW 9A.08.010(1)(a). The trier of fact should also look to “all the circumstances of the case, including not only the manner and act of inflicting the wound, but also the nature of the prior relationship and any previous threats” to determine intent. *State v. Ferreira*, 69 Wn. App. 465, 468-69, 850 P.2d 541 (1993) (quoting *State v. Woo Won Choi*, 55 Wn. App. 895, 906, 781 P.2d 505 (1989), *review denied*, 114 Wn.2d 1002 (1990)).

⁵ RCW 9A.36.011 provides: “(1) A person is guilty of assault in the first degree if he or she, with intent to inflict great bodily harm: (a) Assaults another with a firearm or any deadly weapon or by any force or means likely to produce great bodily harm or death.” RCW 9A.04.110(4)(c) defines “[g]reat bodily harm” as “bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ.”

34958-2-II

Here, if we construe all evidence presented at trial in favor of the State, the evidence was sufficient for the jury to find that Rudner intended to inflict great bodily harm upon Faranda. The jury heard undisputed testimony that Rudner entered Faranda's home uninvited, in order to steal the keys to Faranda's car. Rudner pointed the gun at Riley and demanded the keys to Faranda's Mustang. Arnestad admitted on the stand that when Faranda refused to comply with the same demand, she and Rudner forced Faranda to his knees, and held a gun to his head.⁶ Riley saw Rudner pull the trigger while aiming the gun at Faranda's head.

Because credibility issues are left to the trier of fact and are not subject to review, contradictory evidence is of no moment if there is sufficient evidence supporting the jury's verdict. Considering all the circumstances of the case, the trier of fact had sufficient evidence to find Rudner intended to inflict serious bodily harm on Faranda, either on his own or as an accomplice to Arnestad.

But there is no evidence that Rudner intended to inflict great bodily harm upon Riley. Although the pistol was pointed at her, Rudner voiced no threats of death or great bodily harm, did not pull the trigger while pointing the gun at her, and did not place her in an execution kneeling position like Faranda. And though Arnestad assaulted Riley with her hands while wearing rings, this alone does not evidence an intent to inflict great bodily harm. Thus, there was insufficient evidence to convict Rudner of first degree assault against Riley. But, there was

⁶ The jury also found Rudner liable for Arnestad's actions against Faranda and Riley as an accomplice. Rudner does not challenge this finding or the jury instruction on accomplice liability.

34958-2-II

sufficient evidence to convict him of second degree assault under RCW 9A.36.021(I)(c) because he assaulted Riley with a deadly weapon.⁷ The court instructed the jury as to second degree assault as a lesser included offense. We can direct the entry of a verdict if there is sufficient evidence of a lesser included or inferior degree crime. *See State v. Gamble*, 118 Wn. App. 332, 336 n.4, 72 P.3d 1139 (2003, *aff'd in part, rev'd in part*, 154 Wn.2d 457, 114 P.3d 646 (2005)).

II. UNANIMITY INSTRUCTION

Rudner argues the trial court deprived him of his right to a unanimous jury verdict on his first degree assault charges by presenting evidence of five potential assaults,⁸ where a reasonable juror could have doubts about at least one assault rising to the level of first degree. The State contends that a unanimity instruction was unnecessary because the multiple criminal acts presented at trial were part of a continuing course of conduct. The State is correct.

The right to a unanimous verdict is a fundamental right derived from the constitutional right to a jury trial.⁹ *State v. Gooden*, 51 Wn. App. 615, 617, 754 P.2d 1000 (1988) (citing *State*

⁷ RCW 9A.36.021(1) provides, "A person is guilty of assault in the second degree if he or she, under circumstances not amounting to assault in the first degree . . . (c) Assaults another with a deadly weapon."

⁸ Rudner maintains the five separate alleged assaults are: (1) Rudner pulling the trigger on the gun while pointed at Faranda; (2) Rudner hitting Faranda in the face with the gun; (3) Rudner pointing the gun at Riley; (4) Rudner's accomplice liability for Arnestad hitting Riley; and (5) Rudner vicariously assaulting Riley by pointing the gun at Faranda. *See State v. Wilson*, 125 Wn.2d 212, 218-19, 883 P.2d 320 (1994).

⁹ Rudner did not propose a unanimity instruction at trial, but we may consider this argument for the first time on appeal because it is of constitutional magnitude. *State v. Russell*, 101 Wn.2d 349, 354, 678 P.2d 332 (1984); *Camarillo*, 115 Wn.2d at 63.

34958-2-II

v. Handyside, 42 Wn. App. 412, 415, 711 P.2d 379 (1985)), *review denied*, 111 Wn.2d 1012 (1988). An appellate court reviews alleged errors in jury instructions de novo, in the context of the instructions as a whole. *State v. Bennett*, 161 Wn.2d 303, 307, 165 P.3d 1241 (2007) (citing *State v. Brett*, 126 Wn.2d 136, 171, 892 P.2d 29 (1995), 516 U.S. 1121 (1996), *cert. denied*, 516 U.S. 1121 (1996)).

A jury may convict a defendant only if it unanimously finds he committed the criminal act with which he is charged. *State v. Love*, 80 Wn. App. 357, 360, 908 P.2d 395 (citing *State v. King*, 75 Wn. App. 899, 902, 878 P.2d 466 (1994), *review denied*, 125 Wn.2d 1021 (1995)), *review denied*, 129 Wn.2d 1016 (1996). Where the State charges only one criminal act but presents evidence of many potentially criminal events, a unanimity instruction is required because "there is a danger that a conviction may not be based on a unanimous jury finding that the defendant committed any given single criminal act." *Love*, 80 Wn. App. at 360-61 (citing *State v. Kitchen*, 110 Wn.2d 403, 411, 756 P.2d 105 (1988)).

If the multiple criminal acts presented constitute one continuing course of conduct, neither an election nor unanimity instruction is required. *State v. Handran*, 113 Wn.2d 11, 17, 775 P.2d 453 (1989). To determine whether multiple criminal acts amount to a continuing course of conduct, courts look to whether the acts were committed as part of an ongoing "enterprise with a single objective." *Gooden*, 51 Wn. App. at 619-20. The determination must be "evaluated in a commonsense manner." *Handran*, 113 Wn.2d at 17 (citing *State v. Petrich*, 101 Wn.2d 566, 571, 683 P.2d 173 (1984)).

In *Handran*, 113 Wn.2d 11, the defendant asserted he was deprived of a unanimous jury verdict because there was no specific unanimity instruction where the State presented evidence



34958-2-II

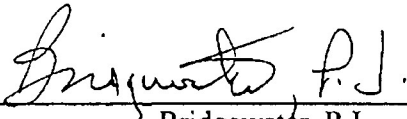
of many crimes, but charged him with only one count of first degree burglary. *Handran*, 113 Wn.2d at 12. Our Supreme Court affirmed the conviction, holding that because the events occurred “in one place during a short period of time between the same aggressor and victim . . . a commonsense evaluation of these facts . . . [reveals] a continuing course of conduct to secure sexual relations with his ex-wife.” *Handran*, 113 Wn.2d at 17. Washington courts have also held that multiple acts comprised a continuing course of conduct where several assaults over a two-hour period led to a fatal injury, as well as where several criminal acts over one-and-a-half weeks were committed for the common objective of promoting prostitution. *State v. Crane*, 116 Wn.2d 315, 330, 804 P.2d 10, *cert. denied*, 501 U.S. 1237 (1991); *Gooden*, 51 Wn. App. at 620.

Rudner’s argument fails because under a commonsense evaluation of the facts, the multiple assaults presented at trial constituted a continuing course of conduct. Though the State presented evidence of five potential assaults at trial, the multiple assaults were committed in one room within a span of about 30 minutes, by the same aggressors toward the same victims. Rudner committed the assaults within a short time period in order to further one objective, to deprive Faranda of his keys and property. Furthermore, under these circumstances it would seem irrational to conclude that each of the five assaults within a 30-minute period was an independent crime, with its own intent and purpose. Because Rudner’s multiple assaults were part of a continuous course of conduct, a unanimity instruction was not required and the court did not violate Rudner’s right to a unanimous jury verdict.

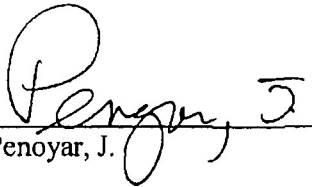
34958-2-II

We affirm the conviction of first degree assault involving Faranda (count I); we vacate the conviction for first degree assault involving Riley (count II), but we direct the court to enter a guilty verdict for second degree assault involving Riley (count II) and we remand for resentencing.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.


Bridgewater, P.J.

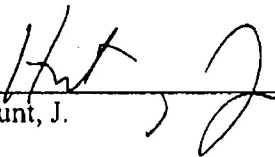
I concur:


Penoyar, J.

34958-2-II

HUNT, J. — (dissenting) I respectfully dissent from the majority's holding that the State did not present sufficient evidence to support Rudner's conviction for first degree assault. The jury heard evidence that Rudner (1) entered Faranda's home unlawfully, (2) pointed a gun at Riley while demanding the keys to the car, and (3) pulled the trigger while holding the gun to Faranda's head. Riley testified that she attacked Arnestad in self-defense because she believed Rudner intended to kill both her (Riley) and Faranda. The absence of a verbal threat by Rudner directed specifically to Riley does not show that Rudner lacked the requisite intent to kill or to inflict great bodily harm on Riley. Nor does this lack of an express separate threat to Riley undercut the jury's believing Riley's testimony¹⁰ that Rudner intended to kill her in addition to Faranda, whom Rudner threatened directly.

It is well settled that a fact-finder's determinations of witness credibility are not subject to our review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Because the evidence supports the jury's determination that Rudner intended to kill or to inflict great bodily harm on Riley, as well as Faranda, I would affirm Rudner's conviction for first degree assault of Riley.



Hunt, J.

¹⁰ The jury's unanimous verdict finding Rudner guilty of first degree assault demonstrates that that it believed Riley's testimony.

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aforementioned court do hereby certify that the document
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Kevin Stock, Pierce County Clerk

By /S/Chris Hutton, Deputy.

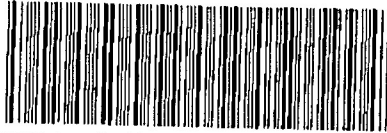
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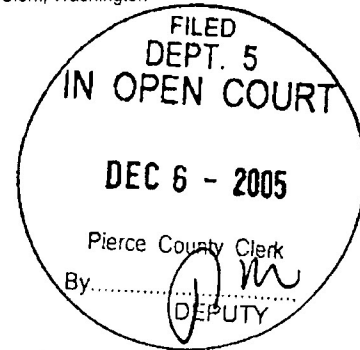
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APPENDIX “C”

Second Amended Information



04-1-03874-1 24165249 AMINF2 12-07-05



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 04-1-03874-1

vs.

ROBERT RICHARD RUDNER, JR,

SECOND AMENDED INFORMATION

Defendant.

DOB: 5/10/1977
PCN#: 538187216

SEX : MALE
SID#: 16146653

RACE: BLACK
DOL#: WA RUDNERR230KS

COUNT I

I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse ROBERT RICHARD RUDNER, JR of the crime of ASSAULT IN THE FIRST DEGREE, committed as follows:

That ROBERT RICHARD RUDNER, JR, in the State of Washington, on or about the 6th day of August, 2004, did unlawfully and feloniously, with intent to inflict great bodily harm, intentionally assault B. Faranda with a firearm or deadly weapon or by any force or means likely to produce great bodily harm or death, contrary to RCW 9A.36.011(1)(a), and in the commission thereof the defendant, or an accomplice, was armed with a firearm, to-wit: a handgun, that being a firearm as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.310/9.94A.510, and adding additional time to the presumptive sentence as provided in RCW 9.94A.370/9.94A.530, and against the peace and dignity of the State of Washington.

COUNT II

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse ROBERT RICHARD RUDNER, JR of the crime of ASSAULT IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,

SECOND AMENDED INFORMATION- I

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

1 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate
2 proof of one charge from proof of the others, committed as follows:

3 That ROBERT RICHARD RUDNER, JR, in the State of Washington, on or about the 6th day of
4 August, 2004, did unlawfully and feloniously, with intent to inflict great bodily harm, intentionally
5 assault K. Riley with a firearm or deadly weapon or by any force or means likely to produce great bodily
6 harm or death, contrary to RCW 9A.36.011(1)(a), and in the commission thereof the defendant, or an
7 accomplice, was armed with a firearm, to-wit: a handgun, that being a firearm as defined in RCW
8 9.41.010, and invoking the provisions of RCW 9.94A.310/9.94A.510, and adding additional time to the
9 presumptive sentence as provided in RCW 9.94A.370/9.94A.530, and against the peace and dignity of the
10 State of Washington.

11 COUNT III

12 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
13 authority of the State of Washington, do accuse ROBERT RICHARD RUDNER, JR of the crime of
14 BURGLARY IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based
15 on the same conduct or on a series of acts connected together or constituting parts of a single scheme or
16 plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to
17 separate proof of one charge from proof of the others, committed as follows:

18 That ROBERT RICHARD RUDNER, JR, in the State of Washington, on or about the 6th day of
19 August, 2004, did unlawfully and feloniously, with intent to commit a crime against a person or property
20 therein, enter or remain unlawfully in a building, located at 2313 S 96th St, and in entering or while in
21 such building or in immediate flight therefrom, the defendant or another participant in the crime was
22 armed with a handgun, a deadly weapon, contrary to RCW 9A.52.020(1)(a), and in the commission
23 thereof the defendant, or an accomplice, was armed with a firearm, to-wit: a handgun, that being a firearm
24 as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.310/9.94A.510, and adding
additional time to the presumptive sentence as provided in RCW 9.94A.370/9.94A.530, and against the
peace and dignity of the State of Washington.

25 COUNT IV

26 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
27 authority of the State of Washington, do accuse ROBERT RICHARD RUDNER, JR of the crime of
28 ROBBERY IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on
the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,
and/or so closely connected in respect to time, place and occasion that it would be difficult to separate
proof of one charge from proof of the others, committed as follows:

29 That ROBERT RICHARD RUDNER, JR, in the State of Washington, on or about the 6th day of
30 August, 2004, did unlawfully and feloniously take personal property belonging to another with intent to

SECOND AMENDED INFORMATION- 2

1 steal from the person or in the presence of B. Faranda and/or K. Riley, the owner thereof or a person
2 having dominion and control over said property, against such person's will by use or threatened use of
3 immediate force, violence, or fear of injury to B. Faranda and/or K. Riley, said force or fear being used to
4 obtain or retain possession of the property or to prevent or overcome resistance to the taking, and in the
5 commission thereof, or in immediate flight therefrom, the defendant was armed with a deadly weapon, to-
6 wit: a handgun, contrary to RCW 9A.56.190 and 9A.56.200(1)(a)(i), and in the commission thereof the
7 defendant, or an accomplice, was armed with a firearm, to-wit: a handgun, that being a firearm as defined
8 in RCW 9.41.010, and invoking the provisions of RCW 9.94A.310/9.94A.510, and adding additional time
9 to the presumptive sentence as provided in RCW 9.94A.370/9.94A.530, and against the peace and dignity
10 of the State of Washington.

COUNT V

11 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
12 authority of the State of Washington, do accuse ROBERT RICHARD RUDNER, JR of the crime of
13 UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE, a crime of the same or similar
14 character, and/or a crime based on the same conduct or on a series of acts connected together or
15 constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and
16 occasion that it would be difficult to separate proof of one charge from proof of the others, committed as
17 follows:

18 That ROBERT RICHARD RUDNER, JR, in the State of Washington, on or about the 6th day of
19 August, 2004, did unlawfully, feloniously, and knowingly own, have in his possession, or under his
20 control a firearm, he having been previously convicted in the State of Washington or elsewhere of a
21 serious offense, as defined in RCW 9.41.010(12), contrary to RCW 9.41.040(1)(a), and against the peace
22 and dignity of the State of Washington.

COUNT VI

23 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
24 authority of the State of Washington, do accuse ROBERT RICHARD RUDNER, JR of the crime of
25 POSSESSION OF A STOLEN FIREARM, a crime of the same or similar character, and/or a crime based
26 on the same conduct or on a series of acts connected together or constituting parts of a single scheme or
27 plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to
28 separate proof of one charge from proof of the others, committed as follows:

29 That ROBERT RICHARD RUDNER, JR, in the State of Washington, on or about the 6th day of
30 August, 2004, did unlawfully, feloniously, and knowingly receive, retain, possess, conceal, or dispose of
31 a stolen firearm, to-wit: a 9 mm handgun, belonging to Jefferson Oakes, knowing the same to be stolen,
32 with intent to appropriate to the use of any person other than the true owner or person entitled thereto,

contrary to RCW 9A.56.140(1) and 9A.56.310(1), and against the peace and dignity of the State of Washington.

COUNT VII

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse ROBERT RICHARD RUDNER, JR of the crime of RESIDENTIAL BURGLARY, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That ROBERT RICHARD RUDNER, JR, in the State of Washington, on or about the 1st day of August, 2004, did unlawfully and feloniously, with intent to commit a crime against a person or property therein, enter or remain unlawfully in the dwelling of Jefferson and Angela Oakes, located at 13312 147th St E., Puyallup, WA, contrary to RCW 9A.52.025, and against the peace and dignity of the State of Washington.

COUNT VIII

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse ROBERT RICHARD RUDNER, JR of the crime of THEFT OF A FIREARM, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That ROBERT RICHARD RUDNER, JR, in the State of Washington, on or about the 1st day of August, 2004, did unlawfully, feloniously, and wrongfully obtain or exert unauthorized control over a firearm, to-wit: a 9 mm handgun, belonging to Jefferson Oakes, with intent to deprive said owner of such property, contrary to RCW 9A.56.020 and 9A.56.300(1)(a), and against the peace and dignity of the State of Washington.

COUNT IX

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse ROBERT RICHARD RUDNER, JR of the crime of RESIDENTIAL BURGLARY, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That ROBERT RICHARD RUDNER, JR, in the State of Washington, on or about the 1st day of August, 2004, did unlawfully and feloniously, with intent to commit a crime against a person or property

SECOND AMENDED INFORMATION- 4

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930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

1 therein, enter or remain unlawfully in the dwelling of Gregory Griffin, contrary to RCW 9A.52.025, and
2 against the peace and dignity of the State of Washington.

COUNT X

3 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
4 authority of the State of Washington, do accuse ROBERT RICHARD RUDNER, JR of the crime of
5 UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE, a crime of the same or similar
6 character, and/or a crime based on the same conduct or on a series of acts connected together or
7 constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and
8 occasion that it would be difficult to separate proof of one charge from proof of the others, committed as
9 follows:

10 That ROBERT RICHARD RUDNER, JR, in the State of Washington, on or about the 1st day of
11 August, 2004, did unlawfully and feloniously, possess a controlled substance, to-wit: Methamphetamine,
12 classified under Schedule II of the Uniform Controlled Substances Act, contrary to RCW 69.50.4013, and
13 against the peace and dignity of the State of Washington.

14 DATED this 6th day of December, 2005.

15 TACOMA POLICE DEPARTMENT
16 WA02703

GERALD A. HORNE
Pierce County Prosecuting Attorney

17 mms

By: 

GREGORY L GREER
Deputy Prosecuting Attorney
WSB#: 22936

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that the document
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office and that this image of the original has been transmitted pursuant to
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electronically certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/Chris Hutton, Deputy.

Dated: Jul 20, 2010 2:13 PM



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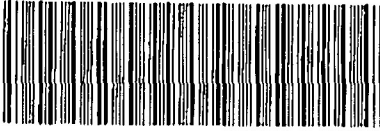
APPENDIX “D”

Special Verdict Forms

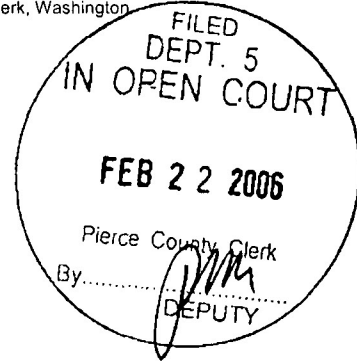
Case Number: 04-1-03874-1 Date: July 20, 2010

SerialID: F1B42D3F-F20F-6452-DE57118FD9281A57

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04-1-03874-1 25005593 SVRD 02-23-08



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

ROBERT RICHARD RUDNER JR.,

Defendant.

CAUSE NO. 04-1-03874-1

SPECIAL VERDICT FORM (Count I)

We, the jury, return a special verdict by answering as follows:

Was the defendant Robert Richard Rudner Jr. armed with a firearm at the time of the commission of the crime in Count I?

ANSWER: YES (Yes or No).
PRESIDING JUROR

MARK D. LEWIS

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that the document
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Kevin Stock, Pierce County Clerk

By /S/Chris Hutton, Deputy.

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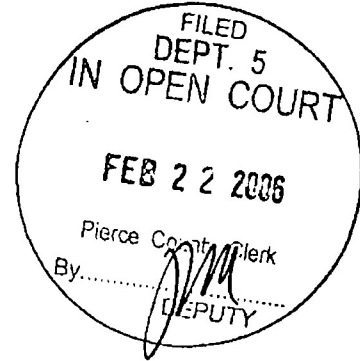
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Case Number: 04-1-03874-1 Date: July 20, 2010

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

ROBERT RICHARD RUDNER JR.,

Defendant.

CAUSE NO. 04-1-03874-1

SPECIAL VERDICT FORM (Count III)

We, the jury, return a special verdict by answering as follows:

Was the defendant Robert Richard Rudner Jr. armed with a firearm at the time of the commission of the crime in Count III?

ANSWER: YES (Yes or No).
PRESIDING JUDGE

MARK D. Lewis

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
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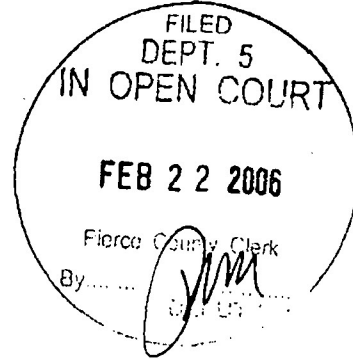
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Case Number: 04-1-03874-1 Date: July 20, 2010

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

ROBERT RICHARD RUDNER JR.,

Defendant.

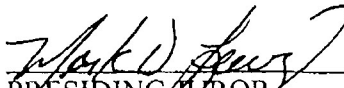
CAUSE NO. 04-1-03874-1

SPECIAL VERDICT FORM (Count IV)

We, the jury, return a special verdict by answering as follows:

Was the defendant Robert Richard Rudner Jr. armed with a firearm at the time of the
commission of the crime in Count IV?

ANSWER: YES (Yes or No).


PRESIDING JUROR
MARK D. LEWIS

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that the document
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Kevin Stock, Pierce County Clerk

By /S/Chris Hutton, Deputy.

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www.co.pierce.wa.us/cfapps/secure/linux/courtfilling/certifieddocumentview.cfm](https://www.co.pierce.wa.us/cfapps/secure/linux/courtfilling/certifieddocumentview.cfm),
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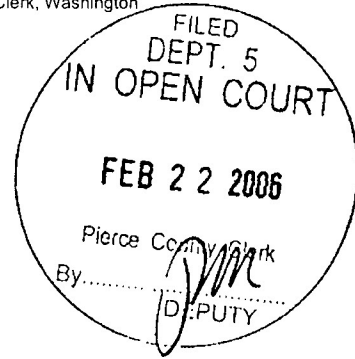
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04-1-03874-1 25005597 SVRD 02-23-08



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

ROBERT RICHARD RUDNER JR.,

Defendant.

CAUSE NO. 04-1-03874-1

SPECIAL VERDICT FORM (Count II)

We, the jury, return a special verdict by answering as follows:

Was the defendant Robert Richard Rudner Jr. armed with a firearm at the time of the
commission of the crime in Count II?

ANSWER: YES (Yes or No).
PRESIDING JUROR

Mark D. Lewis

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that the document
SerialID: F1B42C0E-F20D-AA3E-593372503D403E3C containing 1 pages
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office and that this image of the original has been transmitted pursuant to
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Kevin Stock, Pierce County Clerk

By /S/Chris Hutton, Deputy.

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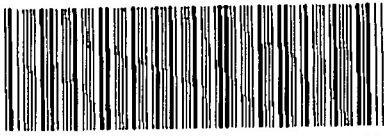
APPENDIX “E”

Note from Defense Attorney

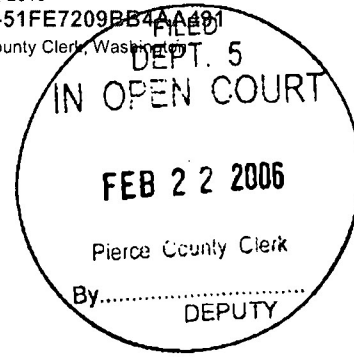
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04-1-03874-1 25005370 NOTE 02-23-08



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff

vs.

RUDNER, JR, ROBERT RICHARD,

Defendant

Cause No. 04-1-03874-1

Case Number: 04-1-03874-1 Date: July 20, 2010

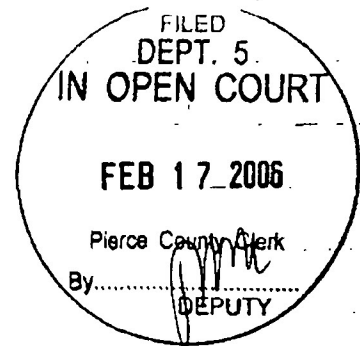
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Re: State v. Rudner.

Upon Review of the Jury Instructions
filed by the State, the Defense
does not have any additional
Instructions to propose to the
Court.

 23616



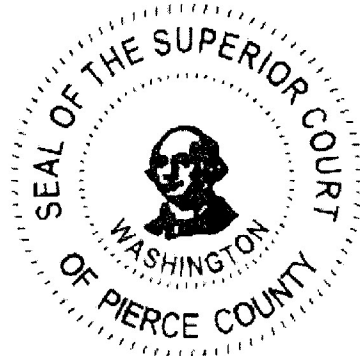
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that the document
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plus this sheet, is a true and correct copy of the original that is of record in my
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Kevin Stock, Pierce County Clerk

By /S/Chris Hutton, Deputy.

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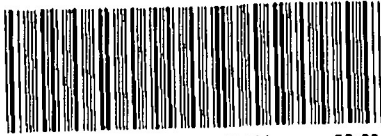
APPENDIX “F”

Court’s Instructions to the Jury

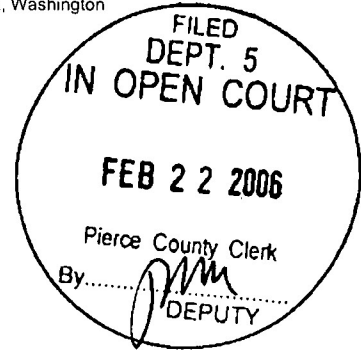
Case Number: 04-1-03874-1 Date: July 20, 2010

SerialID: F1B42F2B-F20D-AA3E-56B51B25E099CB0A

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04-1-03874-1 25005398 CTINJY 02-23-06



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 04-1-03874-1

vs.

ROBERT RICHARD RUDNER JR.,
Defendant.

COURT'S INSTRUCTIONS TO THE JURY

DATED this 21 day of February, 2006.
JUDGE

INSTRUCTION NO. 1

It is your duty to determine which facts have been proved in this case from the evidence produced in court. It also is your duty to accept the law from the court, regardless of what you personally believe the law is or ought to be. You are to apply the law to the facts and in this way decide the case.

The order in which these instructions are given has no significance as to their relative importance. The attorneys may properly discuss any specific instructions they think are particularly significant. You should consider the instructions as a whole and should not place undue emphasis on any particular instruction or part thereof.

A charge has been made by the prosecuting attorney by filing a document, called an information, informing the defendant of the charge. You are not to consider the filing of the information or its contents as proof of the matters charged.

The only evidence you are to consider consists of the testimony of the witnesses and the exhibits admitted into evidence. It has been my duty to rule on the admissibility of evidence. You must not concern yourselves with the reasons for these rulings. You will disregard any evidence that either was not admitted or that was stricken by the court. You will not be provided with a written copy of testimony during your deliberations. Any exhibits admitted into evidence will go to the jury room with you during your deliberations.

In determining whether any proposition has been proved, you should consider all of the evidence introduced by all parties bearing on the question. Every party is entitled to the benefit of the evidence whether produced by that party or by another party.

You are the sole judges of the credibility of the witnesses and of what weight is to be given the testimony of each. In considering the testimony of any witness, you may take into



account the opportunity and ability of the witness to observe, the witness' memory and manner while testifying, any interest, bias or prejudice the witness may have, the reasonableness of the testimony of the witness considered in light of all the evidence, and any other factors that bear on believability and weight.

The attorneys' remarks, statements and arguments are intended to help you understand the evidence and apply the law. They are not evidence. Disregard any remark, statement or argument that is not supported by the evidence or the law as stated by the court.

The attorneys have the right and the duty to make any objections that they deem appropriate. These objections should not influence you, and you should make no assumptions because of objections by the attorneys.

The law does not permit a judge to comment on the evidence in any way. A judge comments on the evidence if the judge indicates, by words or conduct, a personal opinion as to the weight or believability of the testimony of a witness or of other evidence. Although I have not intentionally done so, if it appears to you that I have made a comment during the trial or in giving these instructions, you must disregard the apparent comment entirely.

You have nothing whatever to do with any punishment that may be imposed in case of a violation of the law. The fact that punishment may follow conviction cannot be considered by you except insofar as it may tend to make you careful.

You are officers of the court and must act impartially and with an earnest desire to determine and declare the proper verdict. Throughout your deliberations you will permit neither sympathy nor prejudice to influence your verdict.



1988 2/23/2006 00116

Case Number: 04-1-03874-1 Date: July 20, 2010

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INSTRUCTION NO. 2

The defendant has entered a plea of not guilty. That plea puts in issue every element of the crime charged. The State is the plaintiff, and has the burden of proving each element of the crime beyond a reasonable doubt.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly and carefully considering all of the evidence or lack of evidence. If, after such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.



1988 2/23/2006 00117

Case Number: 04-1-03874-1 Date: July 20, 2010

SerialID: F1B42F2B-F20D-AA3E-56B51B25E099CB0A

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INSTRUCTION NO. 3

The defendant is not compelled to testify, and the fact that the defendant has not testified cannot be used to infer guilt or prejudice him in any way.

Case Number: 04-1-03874-1 Date: July 20, 2010

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INSTRUCTION NO. 4

Evidence may be either direct or circumstantial. Direct evidence is that given by a witness who testifies concerning facts that he or she has directly observed or perceived through the senses. Circumstantial evidence is evidence of facts or circumstances from which the existence or nonexistence of other facts may be reasonably inferred from common experience. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. One is not necessarily more or less valuable than the other.



Case Number: 04-1-03874-1 Date: July 20, 2010

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INSTRUCTION NO. 5

A witness who has special training, education or experience in a particular science, profession or calling, may be allowed to express an opinion in addition to giving testimony as to facts. You are not bound, however, by such an opinion. In determining the credibility and weight to be given such opinion evidence, you may consider, among other things, the education, training, experience, knowledge and ability of that witness, the reasons given for the opinion, the sources of the witness' information, together with the factors already given you for evaluating the testimony of any other witness.



1988 2/23/2006 00120

Case Number: 04-1-03874-1 Date: July 20, 2010

SerialID: F1B42F2B-F20D-AA3E-56B51B25E099CB0A

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INSTRUCTION NO. 6

Evidence that a witness has been convicted of a crime may be considered by you in deciding what weight or credibility should be given to the testimony of the witness and for no other purpose.

INSTRUCTION NO. 7

A person who is an accomplice in the commission of a crime is guilty of that crime whether present at the scene or not.

A person is an accomplice in the commission of the charged crime if, with knowledge that it will promote or facilitate the commission of the crime, he or she either:

- (1) solicits, commands, encourages, or requests another person to commit the crime; or
- (2) aids or agrees to aid another person in planning or committing the crime.

The word "aid" means all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice.

Case Number: 04-1-03874-1 Date: July 20, 2010

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INSTRUCTION NO. 8

A separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count.

Case Number: 04-1-03874-1 Date: July 20, 2010

SerialID: F1B42F2B-F20D-AA3E-56B51B25E099CB0A

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INSTRUCTION NO. 9

A person commits the crime of assault in the first degree when, with intent to inflict great
bodily harm, he or she assaults another with a firearm or by any force or means likely to produce
great bodily harm or death.

INSTRUCTION NO. 10

An assault is an intentional touching or striking of another person that is harmful or offensive regardless of whether any physical injury is done to the person. A touching or striking is offensive, if the touching or striking would offend an ordinary person who is not unduly sensitive.

An assault is also an act done with intent to inflict bodily injury upon another, tending, but failing to accomplish it and accompanied with the apparent present ability to inflict the bodily injury if not prevented.

An assault is also an act done with the intent to create in another apprehension and fear of bodily injury, and which in fact creates in another a reasonable apprehension and imminent fear of bodily injury even though the actor did not actually intend to inflict bodily injury.

Case Number: 04-1-03874-1 Date: July 20, 2010

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INSTRUCTION NO. 11

A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result, which constitutes a crime.

Case Number: 04-1-03874-1 Date: July 20, 2010

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INSTRUCTION NO. 12

Great bodily harm means bodily injury that creates a probability of death, or which causes significant serious permanent disfigurement, or that causes a significant permanent loss or impairment of the function of any bodily part or organ.

Case Number: 04-1-03874-1 Date: July 20, 2010

SerialID: F1B42F2B-F20D-AA3E-56B51B25E099CB0A

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

1988 Z/23/2886 88127

INSTRUCTION NO. 13

A "firearm" is a weapon or device from which a projectile may be fired by an explosive
such as gunpowder.

Case Number: 04-1-03874-1 Date: July 20, 2010

SerialID: F1B42F2B-F20D-AA3E-56B51B25E099CB0A

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 14

To convict the defendant of the crime of assault in the first degree as charged in Count 1, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about 6th day of August, 2004, the defendant or an accomplice assaulted Brian Faranda;
- (2) That the assault was committed with a firearm or by a force or means likely to produce great bodily harm or death;
- (3) That the defendant or an accomplice acted with intent to inflict great bodily harm; and
- (4) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 15

To convict the defendant of the crime of assault in the first degree as charged in Count II, each of the following elements of the crime must be proved beyond a reasonable doubt:

~~(1)~~ That on or about 6th day of August, 2004, the defendant or an accomplice assaulted

Kimberly Riley;

~~(2)~~ That the assault was committed with a firearm or by a force or means likely to produce great bodily harm or death;

~~(3)~~ That the defendant or an accomplice acted with intent to inflict great bodily harm; and

~~(4)~~ That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.



1988 2/23/2006 00130

Case Number: 04-1-03874-1 Date: July 20, 2010

SerialID: F1B42F2B-F20D-AA3E-56B51B25E099CB0A

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 16

If you are not satisfied beyond a reasonable doubt that the defendant is guilty of assault in the first degree, the defendant may be found guilty of any lesser crime, the commission of which is necessarily included in the crime charged, if the evidence is sufficient to establish the defendant's guilt of such lesser crime beyond a reasonable doubt.

The crime of assault in the first degree necessarily includes the lesser crime of assault in the second degree.

When a crime has been proven against a person and there exists a reasonable doubt as to which of two or more degrees that person is guilty, he or she shall be convicted only of the lowest degree.



1988 2/23/2006 00131

Case Number: 04-1-03874-1 Date: July 20, 2010

SerialID: F1B42F2B-F20D-AA3E-56B51B25E099CB0A

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 17

A person commits the crime of assault in the second degree when under circumstances not amounting to assault in the first degree he or she intentionally assaults another and thereby recklessly inflicts substantial bodily harm or assaults another with a deadly weapon or assaults another with intent to commit a felony.



1988 2/23/2006 00132

Case Number: 04-1-03874-1 Date: July 20, 2010

SerialID: F1B42F2B-F20D-AA3E-56B51B25E099CB0A

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 18

A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that a wrongful act may occur and the disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation.

Recklessness also is established if a person acts intentionally.



1988 2/23/2006 00133

Case Number: 04-1-03874-1 Date: July 20, 2010

SerialID: F1B42F2B-F20D-AA3E-56B51B25E099CB0A

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 19

Substantial bodily harm means bodily injury that involves a temporary but substantial disfigurement, or that causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or that causes a fracture of any bodily part.

INSTRUCTION NO. 20

To convict the defendant of the lesser included crime of assault in the second degree as charged in Count I, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 6th day of August, 2004, the defendant or an accomplice:
 - (a) intentionally assaulted Brian Faranda and thereby recklessly inflicted substantial bodily harm; or
 - (b) assaulted Brian Faranda with a deadly weapon; or
 - (c) assaulted Brian Faranda with the intent of committing a felony; and
- (2) That the acts occurred in the State of Washington.

If you find from the evidence that element (2) and either element (1)(a), (1)(b) or (1)(c) have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. Elements (1)(a), (1)(b) and (1)(c) are alternatives and only one need be proved.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 21

To convict the defendant of the lesser included crime of assault in the second degree as charged in Count II, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 6th day of August, 2004, the defendant or an accomplice:
 - (a) intentionally assaulted Kimberly Riley and thereby recklessly inflicted substantial bodily harm; or
 - (b) assaulted Kimberly Riley with a deadly weapon; or
 - (c) assaulted Kimberly Riley with the intent to commit a felony; and
- (2) That the acts occurred in the State of Washington.

If you find from the evidence that element (2) and either element (1)(a), (1)(b), or (1)(c) have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. Elements (1)(a), (1)(b), or (1)(c) are alternatives and only one need be proved.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.



1988 2/23/2006 00136

Case Number: 04-1-03874-1 Date: July 20, 2010

SerialID: F1B42F2B-F20D-AA3E-56B51B25E099CB0A

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 22

Robbery and Burglary are felonies.



1988 2/23/2006 00137

Case Number: 04-1-03874-1 Date: July 20, 2010

SerialID: F1B42F2B-F20D-AA3E-56B51B25E099CB0A

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 23

A person commits the crime of burglary in the first degree when he or she enters or remains unlawfully in a building with intent to commit a crime against a person or property therein, and if, in entering or while in the building or in immediate flight therefrom, that person or an accomplice in the crime is armed with a deadly weapon or assaults any person.

Case Number: 04-1-03874-1 Date: July 20, 2010

SerialID: F1B42F2B-F20D-AA3E-56B51B25E099CB0A

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INSTRUCTION NO. 24

A person enters or remains unlawfully in or upon premises when he or she is not then
licensed, invited, or otherwise privileged to so enter or remain.

Case Number: 04-1-03874-1 Date: July 20, 2010
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INSTRUCTION NO. 25

To convict the defendant of the crime of burglary in the first degree as charged in Count III, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 6th day of August, 2004, the defendant or an accomplice entered or remained unlawfully in a building;

(2) That the entering or remaining was with intent to commit a crime against a person or property therein;

(3) That in so entering or while in the building or in immediate flight from the building the defendant or an accomplice in the crime charged was armed with a deadly weapon or assaulted a person; and

(4) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.



1988 2/23/2006 00140

Case Number: 04-1-03874-1 Date: July 20, 2010

SerialID: F1B42F2B-F20D-AA3E-56B51B25E099CB0A

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 26

A person commits the crime of robbery in the first degree when in the commission of a robbery or in immediate flight therefrom he or she is armed with a deadly weapon or displays what appears to be a firearm or other deadly weapon or inflicts bodily injury.

Case Number: 04-1-03874-1 Date: July 20, 2010

SerialID: F1B42F2B-F20D-AA3E-56B51B25E099CB0A

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 27

A person commits the crime of robbery when he or she unlawfully and with intent to commit theft thereof takes personal property, not belonging to the defendant, from the person or in the presence of another against that person's will by the use or threatened use of immediate force, violence, or fear of injury to that person or to the person or property of anyone. The force or fear must be used to obtain or retain possession of the property or to prevent or overcome resistance to the taking, in either of which cases the degree of force is immaterial.

Case Number: 04-1-03874-1 Date: July 20, 2010

SerialID: F1B42F2B-F20D-AA3E-56B51B25E099CB0A

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INSTRUCTION NO. 28

Bodily injury, physical injury or bodily harm means physical pain or injury, illness or an impairment of physical condition.

INSTRUCTION NO. 29

To convict the defendant of the crime of robbery in the first degree as charged in Count IV, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 6th day of August, 2004 the defendant or an accomplice unlawfully took personal property, not belonging to the defendant, from the person or in the presence of another;
- (2) That the defendant or an accomplice intended to commit theft of the property;
- (3) That the taking was against the person's will by the defendant's or an accomplice's use or threatened use of immediate force, violence or fear of injury to that person or to the person or property of another;
- (4) That the force or fear was used by the defendant or an accomplice to obtain or retain possession of the property or to prevent or overcome resistance to the taking;
- (5) That in the commission of these acts or in immediate flight therefrom the defendant or an accomplice was armed with a deadly weapon or displayed what appeared to be a firearm or other deadly weapon or inflicted bodily injury; and
- (6) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

Case Number: 04-1-03874-1 Date: July 20, 2010

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INSTRUCTION NO. 30

A person commits the crime of unlawful possession of a firearm in the first degree when he has previously been adjudicated as a juvenile of a serious offense and knowingly owns or has in his possession or control any firearm.



Case Number: 04-1-03874-1 Date: July 20, 2010

SerialID: F1B42F2B-F20D-AA3E-56B51B25E099CB0A

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INSTRUCTION NO. 31

A person knows or acts knowingly or with knowledge when he or she is aware of a fact, circumstance or result which is described by law as being a crime, whether or not the person is aware that the fact, circumstance or result is a crime.

If a person has information which would lead a reasonable person in the same situation to believe that facts exist which are described by law as being a crime, the jury is permitted but not required to find that he or she acted with knowledge.

Acting knowingly or with knowledge also is established if a person acts intentionally.

Case Number: 04-1-03874-1 Date: July 20, 2010.

SerialID: F1B42F2B-F20D-AA3E-56B51B25E099CB0A

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INSTRUCTION NO. 32

Possession means having a firearm in one's custody or control. It may be either actual or constructive. Actual possession occurs when the weapon is in the actual physical custody of the person charged with possession. Constructive possession occurs when there is no actual physical possession but there is dominion and control over the item, and such dominion and control may be immediately exercised.

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INSTRUCTION NO. 32

To convict the defendant of the crime of unlawful possession of a firearm in the first degree as charged in Count V, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 6th day of August, 2004, the defendant knowingly had a firearm in his possession or control;
- (2) That the defendant had previously been adjudicated guilty as a juvenile of a serious offense; and
- (3) That the possession or control of the firearm occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.



1988 2/23/2006 00148

Case Number: 04-1-03874-1 Date: July 20, 2010

SerialID: F1B42F2B-F20D-AA3E-56B51B25E099CB0A

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 33

A person commits the crime of possessing a stolen firearm when he or she possesses, carries, delivers, sells, or is in control of a stolen firearm.

Possessing a stolen firearm means knowingly to receive, retain, possess, conceal, or dispose of a stolen firearm knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto.

Case Number: 04-1-03874-1 Date: July 20, 2010
SerialID: F1B42F2B-F20D-AA3E-56B51B25E099CB0A
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 34

To convict the defendant of the crime of possessing a stolen firearm as charged in Count VI, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 6th day of August, 2004 the defendant possessed, carried, delivered, sold or was in control of a stolen firearm;
- (2) That the defendant acted with knowledge that the firearm had been stolen;
- (3) That the defendant withheld or appropriated the firearm to the use of someone other than the true owner or person entitled thereto;
- (4) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any of these elements, then it will be your duty to return a verdict of not guilty.



1988 2/23/2006 00150

Case Number: 04-1-03874-1 Date: July 20, 2010

SerialID: F1B42F2B-F20D-AA3E-56B51B25E099CB0A

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 35

A person commits the crime of residential burglary when he or she enters or remains unlawfully in a dwelling with intent to commit a crime against a person or property therein.

Case Number: 04-1-03874-1 Date: July 20, 2010

SerialID: F1B42F2B-F20D-AA3E-56B51B25E099CB0A

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 36

Dwelling means any building or structure or a portion thereof which is used or ordinarily used by a person for lodging.



INSTRUCTION NO. 37

To convict the defendant of the crime of residential burglary as charged in Count IX, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 1st day of August, 2004, the defendant or an accomplice entered or remained unlawfully in a dwelling;

(2) That the entering or remaining was with intent to commit a crime against a person or property therein; and

(3) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of the elements, then it will be your duty to return a verdict of not guilty.

Case Number: 04-1-03874-1 Date: July 20, 2010

SerialID: F1B42F2B-F20D-AA3E-56B51B25E099CB0A

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 38

It is a crime for any person to possess a controlled substance.



1988 2/23/2006 00154

Case Number: 04-1-03874-1 Date: July 20, 2010

SerialID: F1B42F2B-F20D-AA3E-56B51B25E099CB0A

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 39

Possession means having a substance in one's custody or control. It may be either actual or constructive. Actual possession occurs when the item is in the actual physical custody of the person charged with possession. Constructive possession occurs when there is no actual physical possession but there is dominion and control over the substance. Dominion and control need not be exclusive to establish constructive possession.

Case Number: 04-1-03874-1 Date: July 20, 2010

SerialID: F1B42F2B-F20D-AA3E-56B51B25E099CB0A

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 40

Methamphetamine is a controlled substance.



Case Number: 04-1-03874-1 Date: July 20, 2010

SerialID: F1B42F2B-F20D-AA3E-56B51B25E099CB0A

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 41

To convict the defendant of the crime of possession of a controlled substance as charged in Count X, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 1st day of August, 2004, the defendant possessed a controlled substance; and

(2) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.



1988 2/23/2006 00157

Case Number: 04-1-03874-1 Date: July 20, 2010

SerialID: F1B42F2B-F20D-AA3E-56B51B25E099CB0A

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 42

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to re-examine your own views and change your opinion if you become convinced that it is wrong. However, you should not change your honest belief as to the weight or effect of the evidence solely because of the opinions of your fellow jurors, or for the mere purpose of returning a verdict.

Case Number: 04-1-03874-1 Date: July 20, 2010
SerialID: F1B42F2B-F20D-AA3E-56B51B25E099CB0A
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INSTRUCTION NO. 43

Upon retiring to the jury room for your deliberation of this case, your first duty is to select a presiding juror. It is his or her duty to see that discussion is carried on in a sensible and orderly fashion, that the issues submitted for your decision are fully and fairly discussed, and that every juror has an opportunity to be heard and to participate in the deliberations upon each question before the jury.

You will be furnished with all of the exhibits admitted in evidence, these instructions, and a verdict form for each count.

When completing the verdict forms, you will first consider the crime of assault in the first degree as charged in Counts I and II. If you unanimously agree on a verdict, you must fill in the blank provided in verdict form A and/or B the words "not guilty" or the word "guilty," according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in Verdict Form A and/or B.

If you find the defendant guilty on verdict form A and/or B, do not use verdict form A-1 and/or B-1. If you find the defendant not guilty of the crime of assault in the first degree in Count I and/or II, or if after full and careful consideration of the evidence you cannot agree on that crime, you will consider the lesser crime of assault in the second degree. If you unanimously agree on a verdict, you must fill in the blank provided in verdict form A-1 and/or B-1 the words "not guilty" or the word "guilty," according to the decision you reach. If you cannot agree on a verdict, do not fill in the blank provided in Verdict Form A-1 and/or B-1.

If you find the defendant guilty of the crime of assault but have a reasonable doubt as to which of two or more degrees of that crime the defendant is guilty, it is your duty to find the

Case Number: 04-1-03874-1 Date: July 20, 2010

SerialID: F1B42F2B-F20D-AA3E-56B51B25E099CB0A

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defendant not guilty on verdict form A and/or B and to find the defendant guilty of the lesser included crime of assault in the second degree on verdict form A-1 and/or B-1.

Since this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the proper form of verdict or verdicts to express your decision. The presiding juror will sign it and notify the judicial assistant, who will conduct you into court to declare your verdict.

Case Number: 04-1-03874-1 Date: July 20, 2010

SerialID: F1B42F2B-F20D-AA3E-56B51B25E099CB0A

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INSTRUCTION NO. 44

You will also be furnished with special verdict forms. If you find the defendant not guilty do not use the special verdict forms. If you find the defendant guilty, you will then use the special verdict forms and fill in the blank with the answer "yes" or "no" according to the decision you reach. In order to answer the special verdict forms "yes", you must unanimously be satisfied beyond a reasonable doubt that "yes" is the correct answer. If you have a reasonable doubt as to the question, you must answer "no."

Case Number: 04-1-03874-1 Date: July 20, 2010

SerialID: F1B42F2B-F20D-AA3E-56B51B25E099CB0A

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

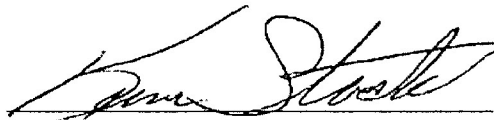
INSTRUCTION NO. 45

For purposes of a special verdict the State must prove beyond a reasonable doubt that the defendant or an accomplice was armed with a deadly weapon at the time of the commission of the crime in Counts I and/or II and/or III, and/or IV. The State must also prove beyond a reasonable doubt that there is a connection between the deadly weapon and the defendant or an accomplice, and between the deadly weapon and the crime.

A person is armed with a deadly weapon if, at the time of the commission of the crime, the deadly weapon is easily accessible for offensive or defensive purposes. If one participant in a crime is armed with a deadly weapon all accomplices are deemed to be so armed, even if only one deadly weapon is involved.

A firearm is a deadly weapon.

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that the document
SerialID: F1B42F2B-F20D-AA3E-56B51B25E099CB0A containing 49 pages
plus this sheet, is a true and correct copy of the original that is of record in my
office and that this image of the original has been transmitted pursuant to
statutory authority under RCW 5.52.050. In Testimony whereof, I have
electronically certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/Chris Hutton, Deputy.

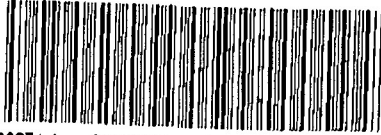
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www.co.pierce.wa.us/cfapps/secure/linux/courtfilling/certifieddocumentview.cfm](https://www.co.pierce.wa.us/cfapps/secure/linux/courtfilling/certifieddocumentview.cfm),
enter **SerialID: F1B42F2B-F20D-AA3E-56B51B25E099CB0A**.
The copy associated with this number will be displayed by the Court.

APPENDIX “G”

Stipulation to Offender Score



04-1-03874-1 25583389 STPPR 06-06-06

FILED
IN COUNTY CLERK'S OFFICE

A.M. JUN 02 2006 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 04-1-03874-1

vs.

ROBERT RICHARD RUDNER, JR.,

Defendant.

STIPULATION ON PRIOR RECORD
AND OFFENDER SCORE
(Plea of Guilty)

Upon the entry of a plea of guilty in the above cause number, charge ASSAULT IN THE FIRST DEGREE; ASSAULT IN THE FIRST DEGREE; BURGLARY IN THE FIRST DEGREE; ROBBERY IN THE FIRST DEGREE; UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE; POSSESSION OF A STOLEN FIREARM; RESIDENTIAL BURGLARY; UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE, the defendant ROBERT RICHARD RUDNER, JR, hereby stipulates that the following prior convictions are his complete criminal history, are correct and that he is the person named in the convictions:

WASHINGTON STATE CONVICTIONS

Crime	Date of Sentence	Jurisdiction	Date of Crime	Adult/ Juvenile	Crime Type	Class	Score	Felony or Misdemeanor
BURG 2	12/16/92	Clallam Co.	09/07/92	Juv	NV	C	.5	Felony
TMVWOP	12/16/92	Clallam Co.	11/01/92	Juv	NV	C	.5	Felony
THEFT 2	03/02/94	Clallam Co.	07/30/93	Juv	NV	C	.5	Felony
VEH PROWL 1	03/02/94	Clallam Co.	07/30/93	Juv	NV	C	.5	Felony
UPOF	01/11/95	Clallam Co.	12/19/94	Juv	NV	C	.5	Felony
THEFT OF F/A	01/11/95	Clallam Co.	12/19/94	Juv	NV	C	.5	Felony
UPOF	06/25/96	Clallam	02/29/96	A	NV	C	1	Felony

STIPULATION ON PRIOR
RECORD -1
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Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

04-1-03874-1

		Co.						
ESCAPE 1	11/22/96	Clallam Co.	09/13/96	A	NV	C	1	Felony
ATT ELUDE	04/19/99	Kitsap Co.	01/28/98	A	NV	C	1	Felony
FORGERY	05/25/00	Clallam Co.	01/14/00	A	NV	C	1	Felony
MAL MISCH 2	02/19/02	Clallam Co.	12/28/01	A	NV	C	1	Felony
ATT ELUDE	Current	Pierce Co.	01/17/04	A	NV	C	1	Felony
UPOF 2	Current	Pierce co.	01/17/04	A	NV	C	1	Felony

Concurrent conviction scoring: 10

CONVICTIONS FROM OTHER JURISDICTIONS

The defendant also stipulates that the following convictions are equivalent to Washington State felony convictions of the class indicated, per RCW 9.94A.360(3)/9.94A.525 (Classifications of felony/misdemeanor, Class, and Type made under Washington Law):

Crime	Date of Sentence	Jurisdiction	Date of Crime	Adult/Juvenile	Crime Type	Class	Score	Felony or Misdemeanor
TMVWOP	10/23/91	Ventura, CA		Juv	NV	C	.5	Felony

Concurrent conviction scoring: .5

The defendant stipulates that the above criminal history and scoring are correct, producing an offender score as follows, including current offenses, and stipulates that the offender score is correct:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	9+	XII	240-318 MOS.	60 MOS.	300-378 MOS.	LIFE
II	9+	XII	93-123 MOS.	60 MOS.	153-183 MOS.	LIFE
III	9+	VII	87-116 MOS.	60 MOS.	147-176 MOS.	LIFE
IV	9+	IX	129-171 MOS.	60 MOS.	189-231 MOS.	LIFE
V	9+	VII	87-116 MOS.	NONE	87-116 MOS.	10 YRS.
VI	9+	V	72-96 MOS.	NONE	72-96 MOS.	10 YRS.
IX	9+	IV	63-84 MOS.	NONE	63-84 MOS.	10 YRS.
X	9+	I	12+-24 MOS.	NONE	12+-24 MOS.	5 YRS.

*(F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Horn, See RCW 46.61.520, (JP) Juvenile present.

The defendant further stipulates:

- 1) Pursuant to Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), defendant may have a right to have factors that affect the determination of criminal history and offender score be determined by a jury beyond a reasonable doubt. Defendant waives any such right to a jury determination of these factors and asks this court to sentence according to the stipulated offender score set forth above.

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946 County-City Building
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

STIPULATION ON PRIOR
RECORD -2
jsprior.dot

- 1
- 2
- 3 2) That if any additional criminal history is discovered, the State of Washington may
- 4 resentence the defendant using the corrected offender score without affecting the validity
- 5 of the plea of guilty;
- 6 3) That if the defendant pled guilty to an information which was amended as a result of plea
- 7 negotiation, and if the plea of guilty is set aside due to the motion of the defendant, the
- 8 State of Washington is permitted to refile and prosecute any charge(s) dismissed, reduced
- 9 or withheld from filing by that negotiation, and speedy trial rules shall not be a bar to such
- 10 later prosecution;
- 11 4) That none of the above criminal history convictions have "washed out" under RCW
- 12 9.94A.360(3)/9.94A.525 unless specifically so indicated.

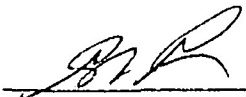
13 If sentenced within the standard range, the defendant further waives any right to appeal or seek

14 redress via any collateral attack based upon the above stated criminal history and/or offender

15 score calculation.

16 Stipulated to this on the 2nd day of June, 2006.

17 28th April

18 
GREGORY L GREER
Deputy Prosecuting Attorney
WSB # 22936

19 
ROBERT RICHARD RUDNER, JR

20 
EPHRAIM W BENJAMIN
WSB # 23616

21 kls

22

23

24

25

26

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28

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that the document
SerialID: F1B42E41-F20D-AA3E-5E1F14A4B2A7205E containing 3 pages
plus this sheet, is a true and correct copy of the original that is of record in my
office and that this image of the original has been transmitted pursuant to
statutory authority under RCW 5.52.050. In Testimony whereof, I have
electronically certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/Chris Hutton, Deputy.

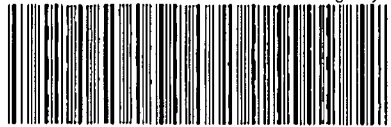
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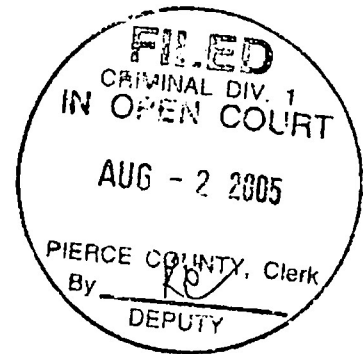
Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted electronically by the Court, sign on to: <https://www.co.pierce.wa.us/cfapps/secure/linux/courtfilling/certifieddocumentview.cfm>, enter SerialID: F1B42E41-F20D-AA3E-5E1F14A4B2A7205E. The copy associated with this number will be displayed by the Court.

APPENDIX “H”

Omnibus Order



04-1-03874-1 23478992 OOR 08-03-05



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

Robert R. Rowner vs.

Defendant.

NO. 041-03874-1

ORDER ON OMNIBUS HEARING

CHARGE: Assault 1

Rob R

TRIAL DATE: 8/30/05

THIS MATTER having come before the court for an omnibus hearing, the State represented by:

PAT Oishi

The defendant is present and represented by:

Sam Bernburg

IT IS ORDERED:

1. Regarding CUSTODIAL STATEMENTS by defendant:

☐ No custodial statements will be offered in the State's case in chief, or in rebuttal.

☐ The statements of defendant will be offered in the State's case in rebuttal only.

☒ The statements referred to in the State's discovery will be offered and:

☐ May be admitted into evidence without a pre-trial hearing, by stipulation of the parties.

☒ A pre-trial hearing shall be held and is estimated to require 30 (min/hr) and is set for

Day after trial

2. Regarding SUPPRESSION OF PHYSICAL EVIDENCE OR IDENTIFICATION:

☒ No motion to suppress physical evidence or identification will be filed.

☒ Defendant's written motion to suppress will be filed by _____ The State's

response will be filed by _____. The State will note a hearing to determine whether an evidentiary hearing will be required on defendant's motion to suppress.

3. ☐ If the defendant testifies at trial, the prior record of convictions contained in the State's discovery

☐ will ☒ will not be acknowledged by this with the following exceptions, if any

[] (No) prior convictions are known at this time; State will advise defendant promptly if it learns of prior convictions.

4. Respective counsel are ordered to exchange:

NAMES, ADDRESSES, AND CONTACT INFORMATION;

KNOWN CONVICTIONS AND CRIMINAL HISTORY INFORMATION OF WITNESSES;

WRITTEN OR RECORDED STATEMENTS AND THE SUBSTANCE OF ANY ORAL STATEMENTS OF SUCH WITNESSES, including EXPERT REPORTS and TEST RESULTS, if any; and MAKE AVAILABLE FOR INSPECTIONS ALL PHYSICAL AND DEMONSTRATIVE EVIDENCE by

2 weeks prior to trial

5. Defendant is ordered to state general nature of defense:

[x] General Denial

[] Consent

[] Alibi

[] Diminished Capacity or Insanity; specify which

[] Self-defense

[] Other; specify

6. No additional motions are anticipated, except: motion to serve offenses

Affidavits and briefs of the moving party must be served and filed (with copy to criminal motion department)

by 8/15/05; Responsive brief by 8/22/05. The hearing will last about 30 (min/hr).

7. The trial will be [x] jury [] non-jury, and will last about 5-7 days.

8. Other matters: St. notices defense of intent to use all ER 609 crimes @ trial - previously disc. in dx. of crim. hx.

DONE IN OPEN COURT this _____ day of 8/2/05

APPROVED:

JUDGE

VICKI L. HOGAN

Deputy Prosecuting Attorney

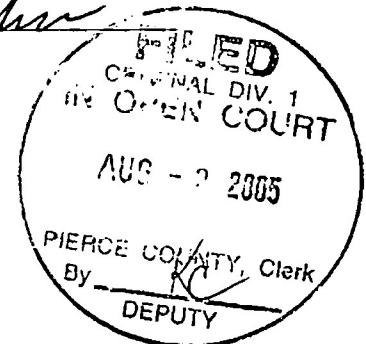
26045

Defense Attorney

27145

I approve my attorney's actions as indicated by this Order and I specifically agree with the computation of time under Criminal Rule 3.3 (the 60-90 day trial rule).

Defendant



State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that the document
SerialID: F1B438F7-F20F-6452-DD6E33C3E568944D containing 2 pages plus
this sheet, is a true and correct copy of the original that is of record in my office
and that this image of the original has been transmitted pursuant to statutory
authority under RCW 5.52.050. In Testimony whereof, I have electronically
certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/Chris Hutton, Deputy.

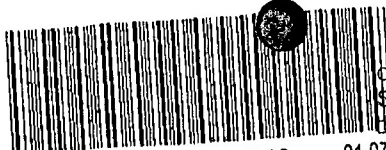
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APPENDIX “I”

Status Conference Order



Case Number: 04-1-03874-1 Date: July 20, 2010
 SerialID: F1B440DE-F20D-AA3E-5DE4E30F663DEB6F
 Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

14391 4/8/2005 05023

04-1-03874-1 22844281 ORSTAC 04-07-05
 CUPJ
 APR 07 2005
 Pierce County Clerk
 By [Signature]
 DEPUTY

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
 IN AND FOR THE COUNTY OF PIERCE**

State of Washington,

Plaintiff,

No. 04-1-03874-1

v.

Status Conference

Robert R. R. R. R.
 Defendant.

- ☐ This case is expected to be a **guilty plea** on _____ or ☐ Plea date will be set.
- ☒ The State has made a **plea offer** (complete and initial).
☒ The defendant has been informed. ☒ The offer has been declined.
 Defendant RR Defense counsel B
☐ The plea offer remains valid through _____
 Prosecuting Attorney [Signature]
- ☐ An **amended information** will be filed on _____.
- ☐ A **continuance** will be requested by _____ and is set for _____.
 Reason: _____
- Jury trial** is set for 5/12, 2005
☒ Parties are **ready** for trial. State: ☒ yes ☐ no. Defense: ☒ yes ☐ no.
- Estimated **trial length**. State: 5-7 days Defense: 2 wks
- Witness lists** have been **filed** and all witnesses **disclosed**.
 State: ☒ yes ☐ no If no, witness list will be filed by _____, 200____.
 Defense: ☐ yes ☒ no If no, witness list will be filed by 4/28, 2005

8. There will be **out-of-state witnesses**: ☐ yes ☒ no

9. There may be **witness scheduling problems**: State: ☐ yes ☒ no
Defense: ☐ yes ☒ no

Why: _____

10. ☐ A **child competency hearing** is needed and ☐ set for _____ ☐ will be set.

11. **Discovery**. State: ☒ Complete ☐ Incomplete. Defense: ☒ Complete ☐ Incomplete
_____ to be provided to _____ on or before _____
_____ to be provided to _____ on or before _____

12. The following **motions** will be made before the day of trial (motions of more than one hour ARE NOT to be heard on the day of trial without permission of CDPJ).

☒ CrR 3.5 ☐ CrR 3.6 ☐ Other _____
Motions are set for: Trial date

Briefing Schedule: Motion(s) due: _____ Response due: _____

13. Defendant needs a **competency evaluation**: ☐ yes ☒ no

14. A **juror questionnaire** will be requested at the time of trial: ☐ yes ☒ no

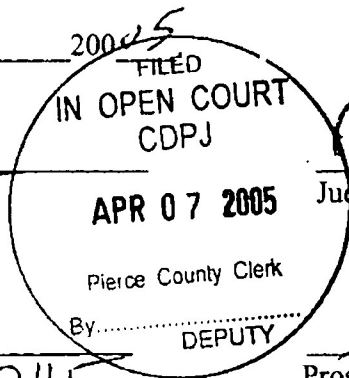
Comments: _____

15. An **interpreter** is required: ☐ yes ☒ no. Language: _____

IF YES, THE ASSIGNED DPA IS RESPONSIBLE FOR NOTIFYING THE COURT'S INTERPRETER COORDINATOR AT x 6091.

Dated: 4.7 2005

[Signature]
Defendant



[Signature]
Judge

[Signature]
Defendant's Attorney/Bar # 27165

[Signature] 22936
Prosecuting Attorney/Bar #

NEITHER THE DEPUTY PROSECUTING ATTORNEY, DEFENSE COUNSEL, NOR THE DEFENDANT IS RELEASED FROM ATTENDANCE UNTIL THE COURT APPROVES THIS ORDER.

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that the document
SerialID: F1B440DE-F20D-AA3E-5DE4E30F663DEB6F containing 2 pages
plus this sheet, is a true and correct copy of the original that is of record in my
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Kevin Stock, Pierce County Clerk

By /S/Chris Hutton, Deputy.

Dated: Jul 20, 2010 2:13 PM

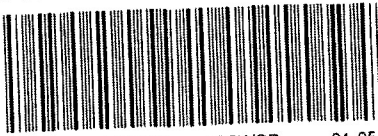


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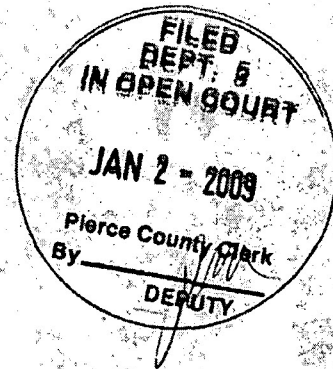


APPENDIX “J”

Judgment and Sentence



04-1-03874-1 31218829 JDSWCD 01-05-09



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 04-1-03874-1

JAN 02 2009

vs.

ROBERT RICHARD RUDNER, JR.,

Defendant

WARRANT OF COMMITMENT

- 1) ☐ County Jail
 2) ☒ Dept. of Corrections
 3) ☐ Other Custody

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

[] 1 YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).

A 2 YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections, and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Department of Corrections custody).

WARRANT OF
COMMITMENT - 2

Office of Prosecuting Attorney
 930 Tacoma Avenue S. Room 946
 Tacoma, Washington 98402-2171
 Telephone: (253) 798-7400

[] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for
classification, confinement and placement as ordered in the Judgment and Sentence
(Sentence of confinement or placement not covered by Sections 1 and 2 above).

Dated: 1/2/09

By direction of the Honorable

Vicki L. Hogg
JUDGE
KEVIN STOCK

CLERK

By: Chris Hutton

DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

JAN 02 2009

Chris Hutton
Deputy

STATE OF WASHINGTON

County of Pierce

I, Kevin Stock, Clerk of the above entitled
Court, do hereby certify that this foregoing
instrument is a true and correct copy of the
original now on file in my office.

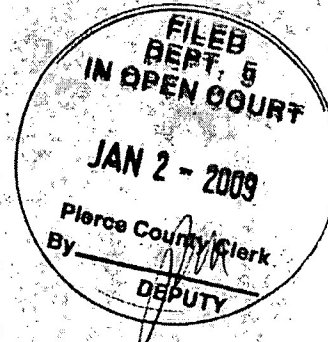
IN WITNESS WHEREOF, I hereunto set my
hand and the Seal of Said Court this

_____ day of _____, _____

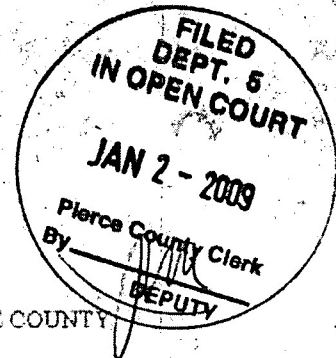
KEVIN STOCK, Clerk

By: _____ Deputy

ams



04-1-03874-1



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 04-1-03874-1

vs.

JUDGMENT AND SENTENCE (JS)

ROBERT RICHARD RUDNER, JR

Defendant.

- ☒ Prison ☐ RCW 9.94A.712 Prison Confinement
☐ Jail One Year or Less
☐ First-Time Offender
☐ Special Sexual Offender Sentencing Alternative
☐ Special Drug Offender Sentencing Alternative
☐ Breaking The Cycle (ETC)
☐ Clerk's Action Required, para 4.5
(SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6
and 5.8

SID: WA16146653
DOB: 05/10/77

JAN 02 2009

I. HEARING

- 1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

- 2.1 CURRENT OFFENSE(S): The defendant was found guilty on 2/22/06
by ☐ plea ☒ jury-verdict ☐ bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	ASSAULT IN THE FIRST DEGREE (E23)	9A.36.011(1)(a) 9.94A.310/9.94A.510 9.94A.370/9.94A.530 9.94.010	FASE	08/06/04	04-219-0171
II	ASSAULT IN THE SECOND DEGREE (E28)	9A.36.021(1)(c) 9.94A.310/9.94A.510 9.94A.370/9.94A.530	FASE	08/06/04	04-219-0171
III	BURGLARY IN THE FIRST DEGREE (G1)	9A.52.020(1)(a) 9.41.010 9.94A.310/9.94A.510 9.94A.370/9.94A.530	FASE	08/06/04	04-219-0171

JUDGMENT AND SENTENCE (JS)
(Felony) (7/2007) Page 1 of 1

06-9-06503-5

Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

04-1-03874-1

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
IV	ROBBERY IN THE FIRST DEGREE (AAA1)	9A.56.200(1)(a)(i) 9.94A.310/9.94A.510 9.94A.370/9.94A.530 9.41.010	FASE	08/06/04	04-219-0171
V	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE (GGG66)	9.41.040(1)(a)	NONE	08/06/04	04-219-0171
VI	POSSESSION OF A STOLEN FIREARM (BBB12)	9A.56.140(1) 9A.56.310(1)	NONE	08/06/04	04-219-0171
IX	RESIDENTIAL BURGLARY (B12)	9A.52.025	NONE	08/01/04	04-219-0171
X	UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE (J73M); Methamphetamine, Schedule II	69.50.4013	NONE	08/01/04	04-219-0171

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Horn, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9.94A.533(8). (If the crime is a drug offense, include the type of drug in the second column.)

as charged in the JURY VERDICT Information

[] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):

[] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	TMVWOP	10/23/91	VENTURA, CA		JUV	NV
2	BURG 2	12/16/92	CLALLAM CO, WA	09/07/92	JUV	NV
3	TMVWOP	12/16/92	CLALLAM CO, WA	11/01/92	JUV	NV
4	THEFT 2	03/02/94	CLALLAM CO, WA	07/30/93	JUV	NV
5	VEH PROWL 1	03/02/94	CLALLAM CO, WA	07/30/93	JUV	NV
6	UPOF	01/11/95	CLALLAM CO, WA	12/19/94	JUV	NV
7	THEFT OF FA	01/11/95	CLALLAM CO, WA	12/29/94	JUV	NV
8	UPOF	06/25/96	CLALLAM CO, WA	02/29/96	ADULT	NV
9	ESCAPE 1	11/22/96	CLALLAM CO, WA	09/13/96	ADULT	NV
10	ATT ELUDE	04/19/99	KITSAP CO, WA	01/28/98	ADULT	NV
11	FORGERY	05/25/00	CLALLAM CO, WA	01/14/00	ADULT	NV
12	MAL MISCH 2	02/29/02	CLALLAM CO, WA	12/28/01	ADULT	NV
13	ATT ELUDE	CURRENT	PIERCE CO, WA	01/17/04	ADULT	NV
14	UIPOF 2	CURRENT	PIERCE CO, WA	01/17/04	ADULT	NV

☐ The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	9+	XII	240-318 MOS	60 MOS - FASE	300-378 MOS	LIFE
II	9+	IV	63-84 MOS	36 MOS - FASE	99-120 MOS	10 YRS \$20,000
III	9+	VII	87-116 MOS	60 MOS - FASE	147-176 MOS	LIFE
IV	9+	IX	129-171 MOS	60 MOS - FASE	189-231 MOS	LIFE
V	9+	VII	87-116 MOS	NONE	87-116 MOS	10 YRS \$20,000
VI	9+	V	72-96 MOS	NONE	72-96 MOS	10 YRS \$20,000
IX	9+	IV	63-84 MOS	NONE	63-84 MOS	10 YRS \$20,000
X	9+	I	12+ - 24 MOS	NONE	12+ - 24 MOS	5 YRS \$10,000

2.4 ☐ **EXCEPTIONAL SENTENCE.** Substantial and compelling reasons exist which justify an exceptional sentence:

☐ within ☐ below the standard range for Count(s) _____

☐ above the standard range for Count(s) _____

☐ The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

☐ Aggravating factors were ☐ stipulated by the defendant, ☐ found by the court after the defendant waived jury trial, ☐ found by jury by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4. ☐ Jury's special interrogatory is attached. The Prosecuting Attorney ☐ did ☐ did not recommend a similar sentence.

2.5 **ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS.** The court has considered the total amount owing, the defend's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

☐ The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

☐ The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

04-1-03874-1

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are ☐ attached ☐ as follows:

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.

3.2 ☐ The court DISMISSES Counts _____ ☐ The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTN/RJN

\$

SEE SEPARATE ORDER

Restitution to: _____

\$

Restitution to: _____

(Name and Address--address may be withheld and provided confidentially to Clerk's Office).

PCV

\$

500.00 Crime Victim assessment.

DNA

\$

100.00 DNA Database Fee

PUB

\$

1500 Court-Appointed Attorney Fees and Defense Costs

FRC

\$

110.250.00 Criminal Filing Fee

FCM

\$

Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$

Other Costs for: _____

\$

Other Costs for: _____

\$

2210

TOTAL (excluding restitution)

☐ The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

☐ shall be set by the prosecutor.

☐ is scheduled for _____

X RESTITUTION. Order Attached previously entered

☐ The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

☒ All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein. Not less than \$ _____ per month commencing _____. RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b)

☐ **COSTS OF INCARCERATION.** In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

COLLECTION COSTS The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

INTEREST The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

COSTS ON APPEAL An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

4.1b **ELECTRONIC MONITORING REIMBURSEMENT.** The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____ for the cost of pretrial electronic monitoring in the amount of \$ _____.

4.2 ☒ **DNA TESTING.** The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

☐ **HIV TESTING.** The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.3 **NO CONTACT**

The defendant shall not have contact with B. FRANKLIN (LIFE) (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for LIFE years (not to exceed the maximum statutory sentence).

☐ Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence.

4.4 **OTHER:**

4.4a **BOND IS HEREBY EXONERATED**

4.5 CONFINEMENT OVER ONE YEAR The defendant is sentenced as follows:

(a) CONFINEMENT RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

<u>240</u> months on Count	<u>I</u>	<u>116</u> months on Count	<u>V</u>
<u>84</u> months on Count	<u>II</u>	<u>96</u> months on Count	<u>VI</u>
<u>116</u> months on Count	<u>III</u>	<u>84</u> months on Count	<u>IX</u>
<u>171</u> months on Count	<u>IV</u>	<u>24</u> months on Count	<u>X</u>

A special finding/verdict having been entered as indicated in Section 2.1, the defendant is sentenced to the following additional term of total confinement in the custody of the Department of Corrections:

<u>60</u> months on Count No	<u>I</u>	<u>60</u> months on Count No	<u>IV</u>
<u>36</u> months on Count No	<u>II</u>	_____ months on Count No	_____
<u>60</u> months on Count No	<u>III</u>	_____ months on Count No	_____

Sentence enhancements in Counts I, II, III, IV shall run
☐ concurrent ☒ consecutive to each other.
Sentence enhancements in Counts _____ shall be served
☒ flat time ☐ subject to earned good time credit.

Actual number of months of total confinement ordered is: 240 mos + 216 mos enhanced = 456 mos

(Add mandatory firearm, deadly weapons, and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above)

☐ The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____

CONSECUTIVE/CONCURRENT SENTENCES: RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine, with juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

The sentence herein shall run consecutively to all felony sentences in other cause numbers imposed prior to the commission of the crime(s) being sentenced. The sentence herein shall run concurrently with felony sentences in other cause numbers imposed after the commission of the crime(s) being sentenced except for the following cause numbers: RCW 9.94A.589: _____

Confinement shall commence immediately unless otherwise set forth here: _____

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number, RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court:

4.6 [] COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

Count I for 18 months,

Count II for _____ months,

Count III for _____ months,

Count IV for _____ months,

Count V for _____ months,

Count VI for _____ months,

Count IX for _____ months,

Count X for _____ months

☒ COMMUNITY CUSTODY is ordered as follows:

Count	I	for a range from:	<u>24</u>	to	<u>48</u>	Months,
Count	II	for a range from:	<u>18</u>	to	<u>36</u>	Months,
Count	III	for a range from:	<u>18</u>	to	<u>36</u>	Months,
Count	IV	for a range from:	<u>18</u>	to	<u>36</u>	Months,
Count	V	for a range from:	<u>Ø</u>	to	_____	Months,
Count	VI	for a range from:	<u>Ø</u>	to	_____	Months,
Count	IX	for a range from:	<u>Ø</u>	to	_____	Months,
Count	X	for a range from:	<u>12</u>	to	<u>24</u>	Months,

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and chapter 69.50 or 69.52 RCW offense not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Community custody follows a term for a sex offense. -- RCW 9.94A. Use paragraph 4.7 to impose community custody following work ethic camp.]

On or after July 1, 2003, DOC shall supervise the defendant if DOC classifies the defendant in the A or B risk categories; or, DOC classifies the defendant in the C or D risk categories and at least one of the following apply:

a) the defendant committed a current or prior:		
i) Sex offense	ii) Violent offense	iii) Crime against a person (RCW 9.94A.411)
iv) Domestic violence offense (RCW 10.99.020)		v) Residential burglary offense
vi) Offense for manufacture, delivery or possession with intent to deliver methamphetamine including its salts, isomers, and salts of isomers.		
vii) Offense for delivery of a controlled substance to a minor, or attempt, solicitation or conspiracy (vi, vii)		
b) the conditions of community placement or community custody include chemical dependency treatment.		
c) the defendant is subject to supervision under the interstate compact agreement, RCW 9.94A.745.		

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) pay supervision fees as determined by DOC; (7) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC; and (8) for sex offenses, submit to electronic monitoring, if imposed by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

☐ The defendant shall not consume any alcohol.

☒ Defendant shall have no contact with: Buonafina, K. Rice, J. Adams, G. Griffin

☐ Defendant shall remain ☐ within ☐ outside of a specified geographical boundary, to wit: _____

☐ Defendant shall not reside in a community protection zone (within 880 feet of the facilities or grounds of a public or private school). (RCW 9.94A.030(8))

☐ The defendant shall participate in the following crime-related treatment or counseling services: _____

☐ The defendant shall undergo an evaluation for treatment for ☐ domestic violence ☐ substance abuse
☐ mental health ☐ anger management and fully comply with all recommended treatment.

☐ The defendant shall comply with the following crime-related prohibitions: _____

Other conditions may be imposed by the court or DOC during community custody, or are set forth here: _____

☐ For sentences imposed under RCW 9.94A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

PROVIDED: That under no circumstances shall the total term of confinement plus the term of community custody actually served exceed the statutory maximum for each offense.

4.7 ☐ **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on

community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

- 4.8 OFF LIMITS ORDER (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections:

V. NOTICES AND SIGNATURES

- 5.1 COLLATERAL ATTACK ON JUDGMENT. Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100, RCW 10.73.090.
- 5.2 LENGTH OF SUPERVISION. For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505. The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).
- 5.3 NOTICE OF INCOME-WITHHOLDING ACTION. If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.
- 5.4 RESTITUTION HEARING.
[] Defendant waives any right to be present at any restitution hearing (sign initials):
- 5.5 CRIMINAL ENFORCEMENT AND CIVIL COLLECTION. Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.
- 5.6 FIREARMS. You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

5.7 SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200.

N/A

5.8 [] The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

5.10 OTHER: _____

DONE in Open Court and in the presence of the defendant this date: 1/2/09

JUDGE

Print name: _____

VICKI L. HOGAN

Deputy Prosecuting Attorney

Print name: _____

WSB # _____

Attorney for Defendant

Print name: _____

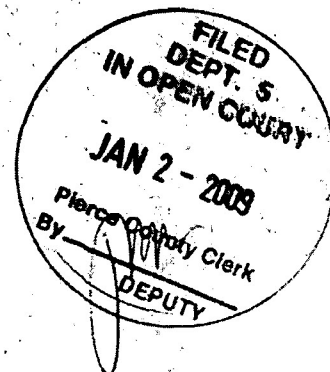
WSB # _____

Defendant

Print name: _____

VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: _____



04-1-03874-1

CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 04-1-03874-1

I, KEVIN STOCK Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: _____

Clerk of said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF COURT REPORTER

RAELENE SEMAGO

Court Reporter

APPENDIX "F"

The defendant having been sentenced to the Department of Corrections for a:

- ☒ sex offense
☒ serious violent offense
☒ assault in the second degree
☐ any crime where the defendant or an accomplice was armed with a deadly weapon
☐ any felony under 69.50 and 69.52

The offender shall report to and be available for contact with the assigned community corrections officer as directed:

The offender shall work at Department of Corrections approved education, employment, and/or community service.

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions:

An offender in community custody shall not unlawfully possess controlled substances.

The offender shall pay community placement fees as determined by DOC.

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

_____ (I) The offender shall remain within, or outside of, a specified geographical boundary: _____

☒ (II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: Brian Faranda, K. Riley, J. A. Dukes, G. Griffin,

DWV Possession/Sellers/users

_____ (III) The offender shall participate in crime-related treatment or counseling services.

_____ (IV) The offender shall not consume alcohol; _____

_____ (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or

_____ (VI) The offender shall comply with any crime-related prohibitions.

_____ (VII) Other: _____

04-1-03874-1

IDENTIFICATION OF DEFENDANT

SID No. WA16146633
(If no SID take fingerprint card for State Patrol)

Date of Birth 05/10/77

FBI No. 940751XA3

Local ID No. UNKNOWN

PCN No. 53S187216

Other

Alias name, SSN, DOB:

Race:				Ethnicity:		Sex:	
<input type="checkbox"/> Asian/Pacific Islander	<input checked="" type="checkbox"/> Black/African-American	<input type="checkbox"/> Caucasian	<input type="checkbox"/> Hispanic	<input checked="" type="checkbox"/> Male			
<input type="checkbox"/> Native American	<input type="checkbox"/> Other	<input checked="" type="checkbox"/> Non-Hispanic	<input type="checkbox"/> Female				

FINGERPRINTS

Left four fingers taken simultaneously

Left Thumb

Right Thumb

Right four fingers taken simultaneously

I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk

Dated: 1/2/09

DEFENDANT'S SIGNATURE

DEFENDANT'S ADDRESS

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that the document
SerialID: F1B43638-F20F-6452-D4D1F04A44255433 containing 15 pages plus
this sheet, is a true and correct copy of the original that is of record in my office
and that this image of the original has been transmitted pursuant to statutory
authority under RCW 5.52.050. In Testimony whereof, I have electronically
certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/Chris Hutton, Deputy.

Dated: Jul 20, 2010 2:13 PM



Instructions to recipient: If you wish to verify the authenticity of the certified
document that was transmitted electronically by the Court, sign on to: [https://](https://www.co.pierce.wa.us/cfapps/secure/linux/courtfilling/certifieddocumentview.cfm)

www.co.pierce.wa.us/cfapps/secure/linux/courtfilling/certifieddocumentview.cfm,

enter SerialID: F1B43638-F20F-6452-D4D1F04A44255433.

The copy associated with this number will be displayed by the Court.